Supreme Court, U.S.
FILED

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THE SUPREME COURT OF THE UNITED STATES

In re the Marriage of:	)	Case No.:
Lorraina J. Telepo, Pro Se,	)	
Petitioner,	)	PETITION
and	)	
PALMER TOWNSHIP; PALMER TOWNSHIP POLICE DEPARTMENT; BRUCE FRETZ, Chief OF Police; OFFICER SUSAN COOPERSMITH; OFFICER GLENN KOEHLER,	)	
Respondent	)	

ON THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
NUMBER 1525

PETITION FOR WRIT OF CERTIORARI

Lorraina J. Telepo

Lorraina J. Telepo, Pro Se

QUESTIONS PRESENTED

I Whether the Third Circuit Court erred and failed to lawfully include evidence by Petitioner proving the grave injustice and heinous crime committed by the Palmer Township Police of falsifying and altering evidence and falsifying the original police report with a false Officer Tracking Number (OTN), then trying to force this false, mockery evidence into their broad power of duty?

II Whether the Third Circuit Court erred and failed to lawfully include evidence considering Petitioners brief, two supplemental briefs and reply brief in a light most favorable to Petitioner?

III Whether the Third Circuit Court erred and failed to lawfully include evidence which properly considered that Honorable Judge Ford, Lehigh County, dismissed the charges against Petitioner on its merits prior to the preliminary hearing?

IV Whether the Third Circuit court erred and failed to lawfully include evidence considering that Winters had wounds on his body without expert medical testimony to prove the wounds were indeed genuine?

V Whether the Third Circuit Court erred and failed to lawfully include evidence which properly was documented that three weeks prior to September 15, 1996, Petitioner wrote a letter of complaint to the Palmer Township Police, Magistrate Weaver, and Magistrate Litzenburger, and that the false charges to create a criminal record for the petitioner was set in motion in retaliation of the letters of complaint, which was consistent with a pattern and practice of malicious conduct since 1989 with Petitioner?

VI Whether the Third Circuit Court erred and failed to lawfully include evidence which properly considered that neither Magistrate Weaver, Magistrate Litzenburger, the Police Officers, the District Attorney's Office, nor Honorable Judge Ford, or Honorable Judge Freedburg, nor any medical clinician ever witnessed any wounds on Winters body, and never compared Winters body to the pictures taken by the Palmer Township Police?

VII Whether the Third Circuit Court erred and failed to lawfully include evidence in not properly considering that the preliminary hearing testimony's of Winters and Coopersmith were inconsistent with their depositions, especially which side of the chest the wounds were on, and that Winters testified at the Preliminary Hearing that he was not punched about his body by petitioner?

VIII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that Winters recanted at the end of October 1996, before he had any communication with Petitioner, which occurred on November 6, 1996?

IX Whether The Third Circuit Court erred and failed to lawfully include evidence acknowledging that there had to be Malicious Prosecution for Honorable Judge Freedburg to grant Petitioner on-the-spot nolle prosequi on December 11, 1996 for the alleged crime, thus declaring the Palmer Township Police, Winters, and all involved with the false prosecution to be impeached as liars?

X Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that the Palmer Township Police are creating bogus evidence pictures to use in malice against innocent people, thus creating an unsafe community for the immediate and national safety of the public?

X I Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that the police invaded Petitioners home in the middle of the night, and forced Petitioner from her solely leased residence, to face the dangers of the street at 2:30 A.M., knowing in the Officers testimony of deposition, both officers agreed they instructed Petitioner she could return to her home, Sixteen Fayette Court, on Monday morning, then on Tuesday morning filed a complaint against Petitioner which went public in the Morning Call Newspaper, falsely using Petitioners office address instead, 145 Northampton Street, as Petitioners recorded address, thus denying Petitioner the freedom and safety of her own

private home, without any hard, or even mere investigation evidence available to them, such as a driver license, that Winters indeed did live there?

XII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering and to further explore that Petitioners Attorney Jarvis at the hearing for the Motion for Summary Judgment on February 19, 1999, that Petitioners Attorney informed Honorable Judge Robreno that Petitioner could prove that the hair underneath the armpit of Winters picture, taken by the police, and submitted by Defendants in their own Motion for Summary Judgment exhibits, was not the armpit hair of Winters, and that there were several extra chest nipples showing in the picture. The Appeals Court and Third Circuit Court denied Petitioners motion to have these pictures placed into evidence, although the time for the producing of the evidence would have been at the trial?

XIII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering and recognizing that Coopersmith did not file a criminal complaint the next day, instead Coopersmith filed the criminal complaint with Magistrate Litzenburger, the afternoon of September 17, 1996, needing to produce the false, doctored pictures to show for probable cause, without any investigation or questioning of Petitioner, or without Winters present for the probable cause hearing, on Tuesday the 17th of September 1996, hours after the article was on the streets by the newspaper the Morning Call, approximately 5:00 a.m., Tuesday morning, September 17, 1996?

XIV Whether the Third Circuit Court erred and failed to lawfully include evidence to properly consider and determine that it is not within the broad range of duty that police are allowed to maliciously case fix, alter evidence, fabricate pictures, and terrorize citizens, causing them to never again feel safe in the guardianship and protection of those in authority over them?

XV Whether the Third Circuit erred and failed to lawfully include factually that all of the Government Authorities, including

the Third Circuit Court of Appeals, the defendants Attorneys who themselves entered the damaging picture in their own motion for summary judgment, Petitioners own Attorney, the Police Officers involved, the Palmer Township Supervisors, the District Attorney, the United States Department of Justice, and now this Honorable United States Supreme Court, all to whom Petitioner dutifully, and by civic virtue, reported the crime of the false evidence created by the police, are, also, not all, by government virtue, honor and duty bound, just as much as Petitioner was as a citizen, once Petitioner became aware of the crime, to take the legal action within their authority to end this most especially, heinous, evil pattern of falsifying evidence in retaliation of a citizen writing an in-house letter of complaint, that the Palmer Township Police are guilty of?

XVI Whether the Third Circuit Court erred and failed to lawfully include all evidence when ruling that Chief Fretz, as supervisor of the Officers, had to approve the charges with the false Officer Tracking Number (OTN), and the doctored pictures, and the altered dental flosser confiscated before probable cause, had no action against him?

XVII Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling stating that Petitioners civil action lacks merit, when the Third Circuit Court totally circumvented and ignored that the police, by falsifying evidence did not stay within their scope of duty, but corruptibly stepped out of their scope of official duty by committing a colluded heinous crime?

XVIII Whether the Third Circuit Court erred and failed to lawfully include evidence by its ruling which unconstitutionally prevents Petitioner a trial with a jury of her peers to judge the evidence Petitioner has to offer at the time of trial, especially, when factually, there was no probable cause and especially no evidence, except malicious false evidence, which makes this a national problem without fail?

XIX Whether the Third Circuit Court erred and failed to lawfully include evidence in wrongfully stating that "instead liability turns on whether the facts and circumstances within the charging officer's

knowledge, *at the time charges are brought,* are sufficient to warrant a reasonable person to believe that an offense has been committed by the person to be charged", errs in assuming that the evidence was false free, and when the Petitioner proved to the Court the evidence was not false free, does this conclusion from the court still apply?

XX Whether the Third Circuit Court erred and failed to lawfully include evidence on the alerting of Petitioner regarding the falsifying of evidence, and did the Court protect the police in falsifying evidence known directly to its own chamber on February 19th, 22nd, and 24th, 1999, before its extremely rapid ruling of a 46 page opinion on February 26, 1999, and endorsed the police in falsifying evidence by stating the officers did act reasonably, when in fact the court had information that there was falsifying evidence and conspiring surrounding a mock arrest, ruled reasonable?

XXI Whether the Third Circuit Court erred and failed to lawfully include evidence by its denying Petitioner motion's "To Accept Affidavit", "To Lodge Exhibits," "Appointment of Council," "To order the District Court to transfer sections 5, 43, and 45," and the denial of these motions were an obstruction of justice?

XXII Whether the Third Circuit Court erred and failed to lawfully include evidence in not properly confirming and ruling that there was a total undisputed lack of investigation, to the point of not questioning the Petitioner before Officer Coopersmith filed charges, at the hearing in front of Magistrate Litzenburger for Probable Cause, via their Department Detectives, their Chief of Police, nor the District Attorney's office?

XXIII Whether the Third Circuit Court erred and failed lawfully to include evidence by not properly considering and exploring the testimony of Officer Koehler reporting Koehler knew from prior incidents that Winters had a tendency to lie about living with Petitioner and that Winters had a tendency for suicide?

XXIV Whether the Third Circuit Court erred and failed to lawfully include evidence in not properly reviewing and not properly considering the evidence that the Palmer Township Police had prior

lawsuits filed against them for insufficient investigations and malicious prosecution claims?

XXV Whether the Third Circuit Court erred and failed lawfully to include evidence by Petitioner that there was definite fabrication of evidence; unwise haste and total lack of due care in prosecuting Petitioner?

XXVI Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering and further exploring the facts that the police were not reasonable, because the police considering all the circumstances, grossly failed to make any investigation such as a reasonable person would make to ensure the prosecution was not tainted by inaccurate, false, or incomplete evidence, thus not utilizing their own Detective and/or District Attorney's services always available to the Police Department?

XXVII Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering and not properly reviewing that the evidence, which formed the basis for arrest, was tainted, malicious, and false?

XXVIII Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering and not properly reviewing that this was not a routine domestic violence case, but a case based on lies, with a total lack of sufficient investigation and indicia of unreliability of Winters who approached the police?

XXIX Whether the Third Circuit Court seriously erred and failed to lawfully include evidence, by deliberately ignoring, and not properly ruling on (out of time and no moving papers) the well documented, docket supported legal argument in Petitioners appeal reflecting Defendants Motion for Summary Judgment was grossly filed out of time when filed in June 1998, according to the docket, the filing time allowed by the Court was firmly March 1998?

XXX Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling that the Defendants Motion for

Summary Judgment was filed grossly out of time, June 1998, instead of the Courts deadline ruling for March 1998, with no moving papers of procedure docketed proving a petition for a continuance?

XXXI Whether the Third Circuit Court erred and failed to lawfully include evidence by deliberately ignoring and circumventing the extensive legal argument of ineffective assistance of Counsel in Petitioners brief?

XXXII Whether the Third Circuit court erred and failed to lawfully include evidence that Petitioner was afforded ineffective assistance of Counsel, when it was proven to the Third Circuit Court of Appeals that Petitioner's Counsel failed to answer Defendants Motion for Summary Judgment or that the Defendants Motion for Summary Judgment was severely docketed out of time?

XXXIII Whether the Third Circuit Court erred and failed to lawfully include evidence that the Defendants were not entitled to Qualified Immunity against Petitioner's Fourth amendment claim of unreasonable seizure?

XXXIV Whether the Third Circuit Court erred and failed to lawfully include evidence by ruling that the Defendants were entitled to Qualified Immunity, thereby permitting a broad scope of judgment and duty extended to tainted, malicious heinous intentions, false information, inaccuracy, fabricating of evidence, unwise hast, lack of due care in prosecutorial duty?

XXXV Whether the Third Circuit Court erred and failed to lawfully include evidence ruling the Defendants were not entitled to Qualified Immunity pursuant to defendants being sued under "personal capacity."?

XXXVI Whether the Third Circuit Court of Appeals erred and failed to lawfully include evidence by dismissing motions to accept into record the evidence of pictures against the Defendants, without an evidence hearing, or allowing the evidence to be revealed to a Jury of Petitioners peers?

XXXVII Whether the Third Circuit Court of Appeals erred and failed to lawfully not include evidence that would further explore that Winters be held totally responsible for giving authorities a false Police report, when the Third Circuit Court should legally also hold the Police accountable for its part in the framing of Petitioner, when it was solely the Police that fabricated a false Officer Tracking Number (OTN) to protect the police from officially sending the framed Police Complaint Report to the Pennsylvania State Police, it solely was the Police that clicked the shutter on the camera, it solely was the Police that doctored and developed the pictures, which are clearly false old, already scarred over, non blood tissue scratches, several chest nipples, and especially not Winters hair under the armpit, and it solely was the Police that broke and altered the dental flosser to make it appear as though the flosser could have caused scratches on Winters body?

XXXVIII Whether the Third Circuit Court of Appeals erred and failed to lawfully include evidence by blocking Petitioner from being able to produce her evidence of a tainted malicious police complaint against Petitioner to the right of a Trial by Jury, which was properly demanded?

XXXIX Whether the Third Circuit Court's erred and failed to lawfully include evidence in its ruling, a ruling that denied Petitioner substantive due process, procedural due process, and due process and protection, because the Courts ruling truly granted harm of liberty of law when the ruling is co-operating and agreeing with the heinous crimes committed by the Palmer Township Police set forth in this Civil Law Suit, thus violating the Fourteenth, Fourth and Sixth Amendment?

XXXX Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling by denying Petitioner equal protection according to the first section of the Fourteenth Amendment, that prohibits states from denying "any person.....the equal protection of the law?"

XXXXI Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling by being permissive to all

these legal entities crimes set forth in this Civil Law Suit, thus promoting the liberty to form and carry out an on-going faction of their own special interests at the harm and expense of the common welfare of Petitioners liberty and freedom?

XXXXII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering in their ruling the "General Welfare Clause" in Article One, Section Eight of the Constitution, which gives Congress power to provide for "the general welfare of the United States?"

XXXXIII Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering the totality of the implied powers of Congress to make all laws that are "necessary and proper" for carrying out the powers expressly delegated to it by the Constitution of the United States of America (Article One, Section Eight)?

XXXXIV Whether the Third Circuit Court erred and failed in its ruling to lawfully include evidence properly considering all the law of nature or natural law of Petitioner to gain and protect a more safe environment for herself and the Nation at large by fighting this case through the law of her Mother Land?

XXXXV Whether the Third Circuit Court erred and failed to lawfully include evidence the PFA did not order restoration of possession of property, and that it was illegal that Winters, or no other adult person was present to take possession of the home when the Officers evicted Petitioner from her solely leased home the early morning of September 15, 1996, 2:30 A.M., in addition, deposition testimony confirmed, the Officers would not procedurally allow Petitioner to lock and secure her home upon departure, leaving and Petitioner's residence open, unsafe, and unsecured?

XXXXVI Whether the Third Circuit Court erred and failed by its ruling to lawfully include evidence which denied Petitioner from being able to produce her evidence of a tainted, malicious, original Police Complaint Report directly documented by Defendants to a Jury of Petitioners peers?

XXXXVII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering or properly ruling that the original Police Incident Report of September 15, 1996, officially recorded a contriving report that reported in the space for the "Type of Complaint" as an expungement, and that the total timing from Police arrival to Police clearing was only one minute?

XXXXVIII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that the Palmer Township Police had a vile pattern and practice of harassing Petitioner since 1989?

XXXXIX Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly regarding or not properly considering Petitioner's right to private domain, the individuals life that is not subject to governmental control, a control in this case, that was definitely corrupt, tainted, thus creating an unsafe environment for Petitioner and an even greater threat to National security, peace and welfare, which is in total conflict of our Constitution of the United States, procedural due process, and especially Petitioners unalienable (inalienable) rights?

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517 U.S. 1189, 116 S. Ct. 1676 (1996)). A person can be liable for malicious prosecution if he "'fail[s] to disclose exculpatory evidence to prosecutors, make[s] false or misleading reports to the prosecutor, omit[s] material information from the reports, or otherwise interfere[s] with the prosecutor's ability to exercise independent judgment' in deciding whether to prosecute." Garcia v. Micewski, No. 97-5379, 1998 WL 547246, at *9 (E.D. Pa. Aug. 24, 1998) (quoting Torres v. McLaughlin, 966 F. Supp. 1353, 1364 (E.D. Pa. 1997), rev'd on other grounds, 163 F.3d 169 (3d Cir. 1998)). ---------- 20

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Lippay v. Christos, 996 F.2d 1490, 1502 (3d Cir. 1993) (quoting Miller v. Pennsylvania Railroad Co., 89 A.2d 809, 811 (1952)) (citations omitted). Probable cause means more than mere suspicion, but does not require the police to have evidence beyond a reasonable doubt. See United States v. Glasser, 750 F.2d 1197, 1205 (3d Cir. 1984). Probable cause is "defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing the suspect had committed or was committing an offense.'" Gerstein v. Pugh, 420 U.S. 103, 111, 95 S. Ct. 854 (???), (quoting Beck v. Ohio, 379 U.S. 89, 91, 85 S. Ct. 223 (1964)). The question of probable cause is generally one for the jury, but where the uncontroverted facts could not lead a reasonable person to find that probable cause was lacking, the Court may decide the issue. See Deary v. Three Un-Named Police Officers, 746 F.2d 185, 190 (3d Cir. 1984); Huffaker v. Bucks County Dist. Attorney's Office, 758 F. Supp. 287, 291 (E.D. Pa. 1991). ---------- 21

Losch v. Borough of Parkesburg, Pennsylvania, 736 F.2d 903, 910 (3d Cir. 1984) (quoting Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037 (1978)). 27

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LIST OF PARTIES

{ X } All parties appear in the caption of the case on the cover page.

{ } All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

OPINION BELOW

The order and opinion of the United States District Court for the Eastern District of Pennsylvania, Civil Action 97-6053, dated February 26th, 1999 is attached as Appendix A.

The Appeal Judgment Order of the United States Court of Appeals for the Third Circuit, case number 99-1525, submitted under Third Circuit LAR 34.1 (a), July 3, 2000, dated October 13, 2000, is attached as Appendix B.

The second Appeal Judgment Order of the United States Court of Appeals for the Third Circuit, case number 99-1525, dated November 22, 2000, is attached as Appendix C.

JURISDICTION

Petitioner's case in the United States District Court for the Eastern District of Pennsylvania was dismissed without prejudice on defendants Motion for Summary Judgment filed February 26, 1999. The United States Court of Appeals for the Third District affirmed that Judgment filed October 13, 2000, UNREPORTED-NOT PRECEDENTIAL The United States Court of Appeals for the Third Circuit, panel rehearing only, denied petitioners petition for rehearing filed November 22, 2000, the time period for filing this petition extends to and includes February 19th, 2001, Presidents Day. This petition is thereby timely filed. The jurisdiction of this court is invoked under 28 U.S.C. { 1254 (a).

STATUTES AND CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitution provides that "and to petition the Government for a redress of grievances."

The Fourth Amendment to the United States Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrents shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment to the United States Constitution provides that " nor be deprived of life, liberty, or property, without due process of law.

The Sixth Amendment to the United States Constitution provides that "and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Fourthteenth Amendment provides that "All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania Rules of Criminal Procedure - Part I - Rule 102 p. 447, Part II Rule 103 Complaint Procedures - 106 p. 448 - 449, Rule 107 Approval of Police Complaints and Arrest Warrant Affidavits By Attorney For The commonwealth - Local Option p. 450 - 451
1983 Civil Rights Act
R. 38-39, Fed. R. Civ. P -Trial on Grounds of Fundamental Fairness
28 U.S.C. § 1367 (c) (3)

STATEMENT OF THE CASE

Petitioner first had harassment from the Palmer Township Police, which has always been a matter of an incident report filed by the Palmer Police, Petitioner wrote her first certified letter of complaint by mail, return receipt requested, to the Palmer Police Department, year 1989. (Lcid 1/6/89 & 2/23/89)

Petitioner then had her second harassment from the Palmer Township Police, incident report 8/9/96, (L.C.id. 8/9/96 (2 pages), whereupon the Palmer Township Police arrived at Petitioners residence of 16 Fayette Court 10:00 p.m., to inform Petitioner that they (Palmer Police) had been directed to go to Petitioners home via orders from the Danville Police Station, to tell Petitioner she was never allowed again to contact her son, Kenneth C. Altenbach, or they (Palmer Police) would arrest Petitioner (LCid filed as 6/1/98 for 8/9/96), Petitioner protested this action to the Policeman in a very respectful manner. Petitioner wrote a letter to her son approximately two months previous, received a letter from son's Attorney Joseph C. Michetti (LCid July 26,1996) three weeks previous, and had no contact with Petitioners son up to the point that the Palmer Police confronted Petitioner of 8/9/96.

Petitioner had written a well documented history to her son, noting how the laboratory that had done a paternity test thirteen years previous, had done the test unlawfully, and that no paternity test had ever been taken. Petitioner, with a Mother's love for her eldest son, did not ever want her son to say "why did you never tell me?" Petitioner gave full and fair disclosure to her son, the hospital, the lawyers, the technicians, the Doctors, and the Laboratory about the new discovery of evidence. While at Petitioners residence, Petitioner informed the Police Officer that he was out-of-the- line-of-duty, this was a personal family matter, and that Petitioner did not take kindly to being threatened in her own residence. Petitioner then wrote the letter of complaint to Palmer Township Police, Officer Corporal Glenn Koehler, certified mail # p 202 799 042 - 89/10/96, Attorney Michetti (for son) Certified mail # p 202 799 039 - 8/10/96, City Council of Danville Pennsylvania, Certified mail # p 202 799 038 - 8/10/96, Mayor Boro of Danville Certified mail # p

202 799 037- 8/10/96, and Danville Police Department Certified mail # p 202 799 040 - 8/10/96, none of whom responded to being informed of the incident to date. This is of particular crucial information, due to the fact that the Police all knew the true and correct address of Petitioner (LCid 5/31/94 lease) in order to arrive at her residence to be messenger boys for another Police Department (Danville) which had no official complaint filed or entered on its record against Petitioner to delegate the late night action 8/9/98.

At the same time, and unrelated to the Danville incident, Petitioner had written a letter of complaint against Magistrate Weaver and Magistrate Litzenburger to the head of the Magistrates in Northampton County, Debra French (now Green), and Honorable President Judge Freedburg, certified mail (LCid 7/2/96), on (LCid 8/29/96). Honorable Judge Freedburg responded to Petitioner(LCid 9/4/96) advising Petitioner to write to the Judicial Conduct Board to inform the Judicial Conduct Board of the actions of the two Magistrates, Weaver and Litzenburger, that both, later, with the Palmer Police were involved in the initiating of the false PFA order and false arrest of Petitioner. Petitioner, complied with the advice of Honorable Judge Freedburg, then proceeded to write the letter to the Judicial Conduct Board, and this letter to the Judicial Conduct Board was on Petitioners kitchen table, ready for editing, on September 15, 1996, when the two Police Officers, Coopersmith and Koehler, along with Winters arrived at Petitioners home, 9/15/96, 2:30 a.m. to initiate the heinous crime against Petitioner.

Terrifyingly, on September 14, 1996, instead of having any relief for Petitioners reports to the all of the above resulting from the Danville incident, all of the following happened to Petitioner as a course of action of retaliation from the Palmer Township Police, Magistrate Weaver and Magistrate Litzenburger. Petitioner, Lorraina J. Telepo, height was five- foot- six, and weight was one-hundred and twenty pounds, address now 704 Decatur Street, Bethlehem, Pennsylvania 18017 and her X-husband, Harold Winters, height six-foot-four, and weight was two-hundred and twenty-five pounds, address now 605 Fourth Street, Apartment One, Catasauqua, Pennsylvania 18732.

Winters became unruly at the solely leased and solely occupied Petitioner's residence, 16 Fayette Court, Easton, Pennsylvania 18043, while Petitioner was on the telephone speaking with her daughter, Gina Bradford, a Supervisory Nurse in Virginia Beach at 10:00 p.m (LCid 1/30/97 to Constable Huber who was paid by Petitioner to do a full scale investigation along with Doctor Mahalikis (Lcid 11/18/96) and Winters was admittedly very jealous of Petitioners children from a formal marriage, which was one of the primary reasons why Winters and Petitioner were separated and Winters did not reside at 16 Fayette Court, Easton, Pennsylvania 18043. Petitioner submitted proof to the Courts in her exhibits that Winters falsified and hid his addresses to the point of having an address with the United States Post Office (LCid 9/18/97 & 9/16/96) using the alias Harry P. Telepo, instead of Winters.

Winters had a history of staying at friends homes, job sites, job offices, Microtel Hotel, Red Roof Inn, and sleeping in his van whenever necessary, keeping only a post office box number to receive his mail. Winters had some belongings in Petitioners residence simply because he never returned to retrieve his belongings. Indeed, Petitioner even hand carried car loads of his belongings he would need for Winter to the office of the company Winters was working for, so that he would have his clothing.

At approximately 11:30 p.m., after abusing Petitioner, Winters left the residence and went to the Palmer Township Police Department. While at the police station, the gross miscarriage of justice began here when the Police report claims Winters told Officer Susan Coopersmith, a novice, part-time Police Officer, that was soon promoted to Detective soon after this case was initiated, that Petitioner scratched Winters on his chest with an electric dental flosser, punched him about the body, and smashed the windshield of Winter's van, when in fact, nothing at all happened (LCid 9/16/96), reporting the wounds to be on the left side of the chest when the pictures clearly showed the right side of the chest, and the armpit hair was definitely not Winters armpit hair - (LCid 3/2/99) informing Honorable Judge RobrenoOfficer on 2/24/99 of these illegal pictures, as well as at the illegal - filed grossly out of time - Motion for Summary Judgement on 2/19/99, Defendants Motion for Summary Judgement Appendix Item # 14, fourth picture is the most incriminating picture, alongwith all of the other pictures.

Winters drove his van, (that was supposed to have a visually impaired, smashed windshield) accompanied by Officer Coopersmith, who was due to go off duty in fifteen minutes, 12:00 p.m., to Magistrate Weaver, twenty minutes away, instead of going to Magistrate Romig ,(LCid 6/30/98) eight minutes away (LC id 6/30/98).

They received the PFA order, which clearly does not have the spaces "ordered restoration of possession to the (household) (residence)" filled in, nor the space "Allowed the defendant to provide suitable, alternate housing by consent-agreement" was not filled in, and at the bottom where Magistrate Weaver signed the issuing authority the space for RESTORATION OF POSSESSION was never filled in, only the space ORDERS OF EVICTION was checked, nor did the PFA order have filled in anywhere the Petitioner was to be evicted from her residence until Monday morning, which means the Police had no Magistrate issuing authority to chase Petitioner out of her home at 2:20 a.m. in the morning, because it is illegal to evict someone from their home, without having an adult present to take possession of the home, and Winters was not present when Petitioner was evicted, and the Police would not allow Petitioner to lock her doors. Point in Court question, why even evict Petitioner if the Magistrate gave no one legal possession of the home? (Defendents Motion for Summary Judgement Appendix Item #1 and PLCid 9/15/96) This proves there was decrepancy and confusion with Officer Coopersmith and Magistrate Weaver exactly where Winters truly was residing.

This PFA order was never sent and filed with the Northampton County PFA Office, nor the Pennsylvania State Police Department. which was the onset collusion incorporating dishonest, secret agreements and hidden agendas, and exploiting efforts with the Petitioners pretending opponents, the police, magistrates and her husband Winters, all of whom were selling Petitioner out.

All legal information, notes, records, Officer Tracking Number (OTN) (LCid filed as 6/1/98 for 9/14/96 Police Incident Report was never electronically filed with the Pennsylvania State Police as required for a remote evidence procedure, (extremely important Lcid 5/25/99, even the expungement was never sent to the expungement unit of the State Police), etc., were corroboration free to ensure this framing of Petitioner would not be fraudfree,

mandating Petitioner to be the wary innocent target for the smoking gun, planting and farming of the Palmer Township Police and Magistrates Weaver and Litzenburger, all of whom could not handle a private in-house, non-public letter of complaint.

While at the police station Officer Coopersmith had Officer Tony DeMarco take photographs of the alleged injuries to Winter's chest. The officers somehow clearly manufactured the scars on Winter's chest with the possible use of double negatives and/computer generated art work. Petitioners Attorney Jarvis refused to initiate a deposition on Tony DeMarco or supenae any log records for September 15, 1996 of pictures taken, developed, or supenae the original, first generation negatives (LCid 3/2/99) and motion to the United States Court of Appeals for the Third Circuit to accept the pictures into evidence, this court denied the motion). Winters, after the preliminary hearing, recanted his accusations (LCid10/27/96 - 12/24/96, especially the 12/11/96 Nolle Prosqui from Honorable President Judge Freedburg, who should be honored for taking this courageous stand of declaring the Palmer Police and Winters all impeached as liars) by stating that the petitioner did not scratch him, nor did Petitioner do any wrong doing. However, the police never filed charges against Winters for filing a false police report, and committing perjury, under oath, on the witness stand.

When Officer Coopersmith typed up the charges she wrote in the simple assault section that Winters was scratched on the left side of the chest. In the harassment section she states that it was the right side of the chest. Then in the investigative section Officer Coopersmith again states that Winters was scratched on the left side of the chest. This was not a typographical error as Officer Coopersmith testified at the preliminary hearing, but an issue confusing tactic of manipulation on the part of Coopersmith that resulted from manufacturing pictures showing the scratches on Winters chest.

Officer Koehler testified under oath that the dental flosser was not broken when it was brought to the police station, however, by the time of the Preliminary hearing the tip of the flosser was altered, broken, and tampered with by breaking the tip creating a jagged edge. Winters also testified at the preliminary hearing that the broken tip on the dental flosser was not the same tip, nor was it the same color. Winters added at the preliminary hearing that the

Petitioner did not punch him about the body. No Police Officer, Magistrate, or Winters ever sought medical help for Winters, nor had any expert medical clinician verify with any law of evidence there had been any wounds on the body of Winters.

Petitioner proved through expert testimony that the wounds depicted on the picture proved to be old wounds, with no fresh blood tissue, the scars were already scabbed over, with scar tissue evident, which could not have happened in twenty minutes, plus existing to this date, there are no scars on Winters chest, either side. After recanting, Winters later in 1999 wrote a letter to Judge Robreno stating the armpit hairs depicted in the police photographs are not that of Winters body, and that he was willing to have his body subpoenaed for evaluation (LCid8/25/98)

At the police station on September 15, 1996, thereafter, the police allowed Winters to drive the van with a supposedly vision impaired broken windshield, following behind Coopersmith, to the office of the District Justice in Northampton County some twenty minutes away to request the issuance of a PFA Order, instead of the Magistrate on duty only eight minutes away from the Police Station.

The District Justice, Weaver, who had also received a letter of complaint three weeks prior from Petitioner and that was also sent to the Judicial Conduct Board, after speaking with Winters, never asking to see any wounds, nor taking any notes, signed an emergency PFA Order, ordering Petitioner to refrain from abusing Winters and illegally evicting Petitioner from her residence, but never checked the blocks giving the residence back to Winters, this proved that these was confusion on the part of these officials as to Winters address, Winters whose drivers license showed an entirely different address that that of Petitioner, as if Winters drove to the Magistrates, he had to have the drivers license on him to produce to both Officer Coopersmith and Magistrate Weaver. It is necessary to also note, that Officer Coopersmith was due to get off duty at 12:00, fifteen minutes after Winters entered the police station, and Officer Coopersmith, also was not required to escort Winters to the Magistrate, but chose to do so on her own.

Petitioner is not going to go into all of the other Lower Courts Exhibits, but wants to draw the attention of this court, particularly to Honorable Judge Ford hearing transcript exhibit, (LCid 10/8/96),

who also believed Petitioner even before the Preliminary hearing before Magistrate Litzenburger, and Litzenburger would not even consider Judge Ford's order - (LCid's Preliminary hearing transcripts 10/15/96, where Winters could not even identify the tip of the dental flosser - Deposition of Winters (LCid 2/26/98), Deposition of Corporal Glenn Koehler (LCid 2/26/98), who testified the flosser was not broken at the time he took it from Petitioner -Deposition of Petitioner Lorraina J. Telepo, that is consistent with the hearing in front of Honorable Judge Ford and Honorable Judge Freedburg (LCid 4/28/98), both should be commended - Letter from Harry Winters to Honorable Judge Robreno 6/7/98 refuting Coopersmiths sworn testimony that he ever told her Petitioner was threatening him with an IRS reporting 8/25/98 confession 2/24/99 confession of Doctored pictures, 3/2/99 Petitioners letter and six photographs - Deposition of Officer Susan Coopersmith, who is now promoted to Detective with the Palmer Township Police Department LCid 6/5/98, Deposition of Chief Bruce Fretz LCid 6/5/98 - Attorney Jarvis brief in response of motion for Summary Judgement - not filed until 12/3/99, Defendants Motion for Summary Judgement was filed 6/99, also especially Petitioners original brief and two supplemental briefs, the first regarding the false original police dispatcher's complaint report starting the false arrest with pre-test conspiracy, noting that the type of charge is written as expungement of 9/15/96, and the second supplemental brief of Rule 103 of the Pennsylvania Rules of Criminal Procedure.

At approximately 1:30 a.m., Coopersmith and Koehler arrived at Petitioner's residence. Later, Petitioner several hours after the eviction called Officer Koehler and asked if she could get some books from her apartment that she needed for teaching the next day. Koehler agreed to meet the Petitioner and retrieve the books for her, Winters van nor Winters was definitely not at the residence, this was approximately 5:00 a.m. Officers Coopersmith and Koehler served the Petitioner with the illegal, misrepresented PFA Order (Winters never showed for the PFA hearing on this cause in Northampton County, and Petitioner then was awarded the PFA (Lcid 9/25/96 & 10/4/96) and advised Petitioner she would have to leave the residence for one and a half days. According to the Police Officers testimony, ordering the return of Petitioner in one and a

half days back to 16 Fayette Court, her very own leased apartment. This proved that the Officers knew the accurate address for Petitioner, however, on September 17, 1996, hours before Officers sought the probable cause order from Magistrate Litzenburger, who also had a complaint letter from Petitioner three weeks prior, the Morning Call Newspaper publicly exploited Petitioner (LCid 9/17/96) with an article depicting the Police version of the incident, and from the Officers information, quoted Petitioners residence not of 16 Fayette Court, but 145 Northamton Street, Easton, Pennsylvania, which was Petitioner health clinic and office. This article still remains on the website of the Morning Call - mcall.com - although Petitioner has written many certified letters to the Morning Call Editor and the losAngeles Times pleading to please remove the article that is still exploiting Petitioners good and most precious reputation.

Despite Petitioner's protestations that she was the sole leaseholder, and sole resident living within the premises, and was trying to show the Officers the lease, the officers did not desist and cease, then go further, to provide information that now was found to be totally different, to the Magistrate, by telephone or by fax. "In determining whether the officer acted reasonably, due wait must be given not to his unparticularized suspicions or 'hunches,' but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary." (People v. Block (1971) 6 Cal.3d 239, 244.)y To the contrary, the warrantless search of a dwelling must be suitably circumscribed to serve the exigency which prompted it. (People v. Hill, supra, 12 Cal.3d at p. 755 and People v. Robers, supra, 47 Cal.2d at p. 380) "The officer's post-entry conduct must be carefully limited to achieving the objective which justified the entry - the officer may do no more than is reasonably necessary to ascertain whether someone is in need of assistance [or property is at risk] and to provide that assistance [or to protect that property]. (3 LaFave, supra, § 6.6(a), p. 401, fn. omitted; id., § 6.6(b), p. 406 The chief evil in this case is that all of the legal facts and procedures surrounding this case were fraudulent, heinous, and tainted, which Petitioner should not have to convince anyone of, due to, Petitioner's case is fully loaded with documentation to support

Petitioners facts. The Officers, knowingly, with different information that was only made available to them, still illegally proceeded to execute the fraudulent PFA Order, with no exigent circumstances, only fraudulent prodedures and information, illegally removed the terrified Petitioner from her private residence, two-thirty in the wee hours of the morning to face the dangers of the street, and to mock Petitioner into never feeling safe, ever again, only vulnerable again, which no counselor can make a Police Department or government safer for the Petitioner.

Winters had arrived with the Officers at the residence, but then left, and when Petitioner left the apartment with the Officers, Winters, nor any adult was not present to take possession of the residence, as was required by law, and the Officers would not allow Petitioner to secure the locks on her doors. This prevented Petitioner from securing her home further was not what a reasonable Officer would do, and further brought the Officers into suspicious activity. The PFA order never had the spaces checked to turn the residence over to the victim, this is a crucial fact in this case. These fraudulent actions by these Public Officials were of the greatest degrading and violation of our First, Fourth Fifth, Sixth and Fourteenth Amendments, and only serves to destroy the morals and ethics of the legal and constituional system of our great country.

When in the apartment, Officer Koehler informed Petitioner in the presence of Winters that Winters claimed Petitioner "got after him with a tooth cleaning device". Petitioner did not recognize what the Officer Koehler was referring to, but told him she had been discussing her brand new dental flosser with her daughter on the telephone, and the Winters because enraged due to Petitioner speaking with her daughter. Officer Koehler ordered Petitioner to get the dental flosser, Petitioner complied with the Police order, and handed the flosser to Officer Koehler, who looked at the flosser, took the flosser outside the home, then came back in and told, not asked, Petitioner that he was taking the flosser with him, never did Koehler ask Petitioner permission to do so, nor did Koehler have any search warrant or authority to take the dental flosser. The procedures of the Miranda Act was never recited to Petitioner, nor was the fact that any wounds were on Winters Chest ever revealed to Petitioner, in fact, the information of wounds were concealed

from Petitioner. At no time did Officer Koehler explain why or ever mention that Winters had any wounds on his body.

In protest about leaving her home, Petitioner asked the Officers who the Magistrate was that gave the PFA order, that the magistrate was misinformed, and that he had to undue and change the order. Officer Coopersmith informed Petitioner that it was Magistrate Stocklas. No reasonable Officer would have misinformed Petitioner that it was Magistrate Stocklas, when it was indeed Magistrate Weaver that signed the PFA order.

Petitioner was then charged through the Morning Call Newspaper dated September 17, 1996, which is on the streets about five o'clock a.m., Officer Coopersmith did not appear before Magistrate Litzenburger, who also had a letter of complaint three weeks previous from Petitioner, until the afternoon of September 17, 1996, to qualify evidence for probable cause. Officer Coopersmith did not have Winters present at this probable cause hearing, and had to produce a now altered dental flosser, false police complaint exhibiting a false officer tracking number (OTN), and doctored false pictures of Winters that did not show Winter's head or face, and the hair underneath the armpit was not the armpit hair of Winters, and the wounds were false wounds that never happened.

It was on February 18, 1999 that Petitioner discovered the falsification of the pictures taken and developed by the Palmer Township Police, who have their own Photographic developing laboratory room right on their premises. Petitioner's Attorney's had been in possession of the photographs up to that point. Petitioner had Photographic experts, one of whom was an x-State Police man, examine the pictures, and the exhibits of their findings are in the exhibits (LCid 7/26/98, 7/27/98)

Both photograph experts revealed that the original, first generation negatives should have to be produced, due to suspicious irregularities, at this time Petitioner did not know about the ambiguous armpit hair. Both experts acknowledged that the wounds appeared to be old wounds, already scabbed over, with no blood revealed, not even a pin drop of blood seen or reported in any evidence or report.

Petitioner consistently maintained throughout that nothing had happened the evening of September 14, 1996, now fully having the proof of this gross injustice, Petitioner immediately, within civic virtue, properly notified Honorable Judge Robreno, Attorney Jarvis, the Attorney for the defendants, and the District Attorney for Northampton county, and the United States Department of Justice, and the FBI, all of whom circumvented the information and would not act on the vital information provided. Winters himself wrote a letter to Judge Robreno stating that was not his armpit hair and that he was willing to submit his body to be examined to prove that the armpit hair was not his (LCid 8/25/98)

Further, in 1999, Petitioner discovered that the original police complaint made on September 15, 1996, had an Officer Tracking Number that belonged to another case, and that this incident or the expungment was never reported to the Pensylvania State Police Department (LCid 5/25/99 - Certified Criminal Check Record of Petitioner). The State Police told Petitioner they were not authorized to give Petitioner the name of the individual that really had that tracking number assigned to their case. Petitioner also discovered at this time that on the original police complaint, section type of complaint, the words expungement, instead of simple assault, was typed in, and that the entire time for investigation read one minute, and the telephone number listed for Winters was 610-515-6874, and the true telephone number for 16 Fayette Court was 610-252-2222.

It was after the preliminary hearing, when the expert witness Petitioner hired, Doctor Mahalikis gave his written report that Petitioner discovered that the dental flosser had been tampered with and broken. Petitioner immediately wrote a letter to Doctor Mahalikis, who did a further investigation and his report favoring Petitioner that the flosser could not have done those wounds, broken or unbroken is in Petitioners exhibits.

December 1996, in Petitioners exhibits, shows Honorable Judge Freedburg's order of expungement for Petitioner who by so ordering, declared Harry P. Winters and the Palmer Police Officers Coopersmith and Koehler to be impeached liars.

The hearing in front of Honorable Judge Ford that happened before Preliminary hearing, and would not be honored by Magistrate Litzenburger, to whom a letter of complaint also was

sent three weeks prior to September 14, 1996, reveals that Judge Ford dismissed all of the allegations against Petitioner on the merits of the case. Thus, you had two Honorable Judges that believed Petitioner and did not believe Winters, or the police.

It was the police that falsified the complaint report with the word expungement and including a false officer tracking number (OCN) so that there could be no paper trail for this case. Then the police illegally took the dental flosser from the home of Petitioner. The Police never read Petitioner her Miranda rights, nor ever informed Petitioner they had assault allegations against her, nor of what they were charging her with. The police never launched an investigation, not even for a second, and the police refused to drop the charges, even after reading Judge Fords dismissal of the charges. It was the police that did damage and alter the dental flosser they unconstitutionally forced from Petitioner, and it was the police that presented it to Magistrate Litzenburger in the altered condition, in their effort to receive a probable cause clearing. Officer Koehler testified under oath that the flosser was not broken when he took it from Petitioner. It was the police that snapped the false pictures and clicked the shutter, doctored and developed the pictures, put false wounds on the pictures, had the false armpit hair placed on the pictures that had no face or head, then tried to pass these pictures off as Harry Winters to use as evidence against Petitioner. It was the police that handcuffed Petitioner to take her from the preliminary hearing into the police station to be fingerprinted and mugshot. It was the police that told Petitioner she could not leave the state of Pennsylvania, and Petitioner had to cancel her Thanksgiving plans with her daughter Gina in Virginia Beach. It was the police that caused Petitioner to have to stand in a hugh court room during Criminal week, and Petitioner had to stand up, amongst persons shackled by the feet, Petitoner had to raise her hand when her name was called, and say, I am here. It was the police that caused Petitioner to be exploited in the Morning Call Newspaper that is ongoing in their website, smearing Petitioners good name and excellent health clinic practice by using her office address to be printed in the Newspaper. It was the police that did all of these things, and everyone is trying to blame Winters solely for the heinous crime, he is not excused, nor should the police be excused for this crime. Petitioner is not just venting, but holds that there

most be accountability, if no accountability, then the authorities and courts are just co-operating with malicious prosecutions, and to not do anything about evil, is to co-operate with evil. Petitioner's Attorney Sabatine that was able to get the expungement for her is in possession of the flosser, and the courts refused to accept his affidavit to that effect, the motion was denied.

According to both Coopersmith and Koehler deposition, when they came to 16 Fayette Court to remove Petitioner from her own home, 2:20 a.m. in the morning, to face the dangers of the street, that the home was orderly, and there was no, absolutely zero indication that such a problem had occurred there. Petitioner cannot rest, be at peace, or feel safe, unless the closure of this insane, heinous, injustice is effectively dealt with, within our legal system. Petitioner then pursued every legal avenue available to her, and was granted instant on-the-spot expungment on December 8, 1996, by the Honorable Judge Freedburg, Northampton Count Commonpleas Court, which is reflected in the dockets of each court level. Petitioner then initiated this Civil Rights lawsuit in February 1997, having every obstacle set against her, to the level of the Supreme Court of this, our very great United States of America.

At no time did the police arrest Winters for filing a false police report, even after Winters recanted his story. This should be crucial in the decision on the Supreme Court to accept this case. The only credit that can be given to Winters is that he did finally tell the truth, Winters decisional was out of weakness, what the police did, was decisional in malice. The pattern and practice of abuse began in 1989 and stretched to 1999, with a van that belonged to Petitioner, and the Palmer Township Police, Officer Koehler involved, tried to arrest Petitioner for stealing her own van that now had a fraudulent title with Petitioners name removed from the title (Lcid 3/2/98 from the Department of Motor Vehicles, ordering Winters to return the fraudulent Title Lcid 6/1/98 - 1/3/98 Police Incident Report about the stolen van), and a gold necklace incident (Lcid 11/20/97 & Police Incident Report 11/21/97), in this incident the Police actually surrounded Petitioners residence and hid around the corners of the building behind bushes, which is part of Petitioners exhibits, and was post-arrest time of September 15, 1996 with Palmer Police continuing their pattern of malicious abuse against

Petitioner. All of what Petitioner has proven in her exhibits against the Police and Magistrates were solid proof that they all illegally stepped far out of their "community care taking function." The "community care taking function" of the Police doctrine does not constitute a corrosive exception to the warrant requirement that would threaten to swallow and kill the entire rule, divorcing the concepts for immediacy and emergency from the test or reasonableness for warrentless and fraudulent police procedures. There are definite "security check" flexibility training rules for Officers that respond to changing and ambiguous circumstances, that are required of a reasonable Officer acting under the same circumstances, these Public Officials created the ambiguous circumstances, therefore, the Officers or Magistrates would not have acted reasonably, nor within a "security check" envionment. This is a severe, national safety issue.

There was a an out-of-time Motion for Summary Judgment submitted to the United States District Court for the Eastern District of Pennsylvania, filed June of 1999, the hearing for the Summary Judgment was held on February 19, 1999, and granted to the Defendants on February 26, 1999. Petitioner informed Honorable Judge Robreno on February 24th, 1999 about her recent discovery of the ambiguous armpit hair in the picture of Winters submitted into evidence by the Defendants. Neither petitioner nor her Attorney was ever informed the February 26, 1999 order had happened. Petitioner then appealed the District Courts decision to the United States Court of Appeals for the Third Circuit, which on October 13, 2000, affirmed the District Courts order. Petitioner then filed a petition for a rehearing en banc that held a vote limited to panel rehearing only, denied the petition for rehearing. Petitioner is now petitioning, before February 15, 2001, for a Writ of Certiorari to the Supreme Court of the United States, due to Judicial bias.

ARGUMENT

I Whether the Third Circuit Court erred and failed to lawfully include evidence by Petitioner proving the grave injustice and heinous crime committed by the Palmer Township Police of falsifying and altering evidence and falsifying the original police report with a false Officer Tracking Number (OTN), then trying to

force this false, mockery evidence into their broad power of duty? This was in severe violation of the First Amendment, Fourth Amendment, Sixth Amendment, Seventh Amendment, and Fourteenth Amendment, and thus is a matter of National Security and importance? (People v. Duncan, supra, 42 Cal. 3d at p. 98.) The Officers entered the premises on a hunch to conduct a "security check," and did not enter the house in order to forestall any imminent danger to permanent property. In contrast, Officers Coopersmith and Koehler, of this case, entered Telepo's solely-leased residence to carry out an illegal Protection From Abuse Order by Magistrate Weaver, and while there confiscated an unbroken dental flosser without Petitioner's approval and without probable cause, warrant or Miranda Rights recited to Petitioner. Officers Coopersmith and Koehler were at the residence to carry out a heinous crime of framing Petitioner with a crime that had never happened, using malicious, bogus, and altered evidence. "A proceeding under [Penal Code] section 1538.5 to suppress evidence is one in which a full hearing is held on the issues before the superior court *sitting as a finder of fact*. In such a proceeding the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor the exercise of that power, and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence." (People v. Lawler (1973) 9 Cal. 3d 156, 160.)

II Whether the Third Circuit Court erred and failed to lawfully include evidence considering Petitioners brief, two supplemental briefs and reply brief in a light most favorable to Petitioner?

III Whether the Third Circuit Court erred and failed to lawfully include evidence which properly considered that Honorable Judge Ford, Lehigh County, dismissed the charges against Petitioner on its merits prior to the preliminary hearing?

IV Whether the Third Circuit court erred and failed to lawfully include evidence considering that Winters had wounds on his body without expert medical testimony to prove the wounds were indeed

genuine? Petitioner actually hired her own Pennsylvania State Constable to do a private investigation alongwith hiring Dr. Isadore Mahalikis, see (Lcid 11/24/96 to prove her innocence). This was in violation of the First, Fifth, Sixth, Seventh, and Fourteenth Amendments, and thus is a matter of National Security and importance?

V Whether the Third Circuit Court erred and failed to lawfully include evidence which properly was documented that three weeks prior to September 15, 1996, Petitioner wrote a letter of complaint to the Palmer Township Police, Magistrate Weaver, and Magistrate Litzenburger, and that the false charges to create a criminal record for the petitioner was set in motion in retaliation of the letters of complaint, which was consistent with a pattern and practice of malicious conduct since 1989 with Petitioner? This was in severe violation of the First Amendment, Fourth Amendment, Sixth Amendment, Seventh Amendment, and Fourteenth Amendment?

VI Whether the Third Circuit Court erred and failed to lawfully include evidence which properly considered that neither Magistrate Weaver, Magistrate Litzenburger, the Police Officers, the District Attorney's Office, nor Honorable Judge Ford, or Honorable Judge Freedburg, nor any medical clinician ever witnessed any wounds on Winters body, and never compared Winters body to the pictures taken by the Palmer Township Police? This was in severe violation of the First Amendment, Fourth Amendment, Sixth Amendment, Seventh Amendment, and Fourteenth Amendment?

VII Whether the Third Circuit Court erred and failed to lawfully include evidence in not properly considering that the preliminary hearing testimony's of Winters and Coopersmith were inconsistent with their depositions, especially which side of the chest the wounds were on, and that Winters testified at the Preliminary Hearing that he was not punched about his body by petitioner?

VIII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that Winters recanted at the end of October 1996, before he had any

communication with Petitioner, which occurred on November 6, 1996?

IX Whether The Third Circuit Court erred and failed to lawfully include evidence acknowledging that there had to be Malicious Prosecution for Honorable Judge Freedburg to grant Petitioner on-the-spot nolle prosequi on December 11, 1996 for the alleged crime, thus declaring the Palmer Township Police, Winters, and all involved with the false prosecution to be impeached as liars? The upholding of these rulings is to keep in alignment with Government Virtue? When both Honorable Judge Ford, Lehigh County, and Honorable President Judge Freedburg, Northampton County ruled on this case, they both indeed, declared both Winters and the Police impeached as liars via their own rulings of dismissing the case on its merits, and granting on-the-spot expungement for Petitioner. All law-abiding, tax-paying citizens desire and expect of their local constabulary "community caretaking functions, that are totally divorced from the illegal detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." (Cady v. Dombrowski (1973) 413 U.S. 433, 441.) Even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority. (Camara v. Municipal Court (1967) 387 U.S) Up to now the law has unequivocally provided Fourth Amendment protections against all searches and "malicious anti-community caretaking functions" by police officers, regardless of their subjective intentions.

X Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that the Palmer Township Police are creating bogus evidence pictures to use in malice against innocent people, thus creating an unsafe community for the immediate and national safety of the public? This is in conflict with the Fourteenth Amendment, that the procedures for conducting hearings and applying and enforcing the law be fair and reasonable. This is called procedural due process and whether the Third Circuit Court erred in applying this to substantive due process, that the content of laws passed by legislatures be fair and reasonable, the Supreme Court has exclusive authority over all courts, especially in

proven rogue reportings? Officers Coopersmith or Koehler did not have reasonable or probable cause for an arrest against Petitioner, which has been the subject of much judicial scrutiny and decision. (People v. Ingle (1960) 53 Cal.2d 407, 412.)

XI Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that the police invaded Petitioners home in the middle of the night, and forced Petitioner from her solely leased residence, to face the dangers of the street at 2:30 A.M., knowing in the Officers testimony of deposition, both officers agreed they instructed Petitioner she could return to her home, Sixteen Fayette Court, on Monday morning, then on Tuesday morning filed a complaint against Petitioner which went public in the Morning Call Newspaper, falsely using Petitioners office address instead, 145 Northampton Street, as Petitioners recorded address, thus denying Petitioner the freedom and safety of her own private home, without any hard, or even mere investigation evidence available to them, such as a driver license, that Winters indeed did live there? This was in violation of Petitioners rights to the Fourteenth Amendment, especially the freedom to reside in her own home without being cast out at 2:30 A.M. to face the dangers of the street? Courts must be especially vigilant against subterfuge, that is, a false reliance upon the personal safety or property protection rationale when the real purpose was to seek out to maliciously frame evidence for a crime. (3 LaFave, supra, § 6.6(b), p. 406, fn. omitted; id., § 6.6(a), p. 402, People v. Roberts, supra, 47 Cal.2d at p. 378 - 380) When officers act in their properly circumsized caretaking capacity, we will not penalize the People by suppressing evidence of crime they discover in the process. "The entry cannot be made on the pretext to search for contraband or illegal activity rather than to look for burglary suspects and to preserve an occupant's property."

XII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering and to further explore that Petitioners Attorney Jarvis at the hearing for the Motion for Summary Judgment on February 19, 1999, that Petitioners Attorney informed Honorable Judge Robreno that Petitioner could prove that the hair underneath the armpit of Winters picture, taken by the

police, and submitted by Defendants in their own Motion for Summary Judgment exhibits, was not the armpit hair of Winters, and that there were several extra chest nipples showing in the picture. The Appeals Court and Third Circuit Court denied Petitioners motion to have these pictures placed into evidence, although the time for the producing of the evidence would have been at the trial? This is in violation of Petitioner's Fourteenth Amendment, which the first Eight Amendments are incorporated into the Fourteenth Amendment, and the violation includes all?

XIII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering and recognizing that Coopersmith did not file a criminal complaint the next day, instead Coopersmith filed the criminal complaint with Magistrate Litzenburger, the afternoon of September 17, 1996, needing to produce the false, doctored pictures to show for probable cause, without any investigation or questioning of Petitioner, or without Winters present for the probable cause hearing, on Tuesday the 17th of September 1996, hours after the article was on the streets by the newspaper the Morning Call, approximately 5:00 a.m., Tuesday morning, September 17, 1996? This was in violation of Petitioner's of Petitioner's Sixth Amendment right, which guarantees you the right to know why you have been arrested, Petitioner was charged by the newspapers publicly, publicly exploiting petitioner, and Petitioner never had a private information procedural process of law as to being informed why Petitioner was getting arrested and without even having the Miranda Law verbally recited to Petitioner?

XIV Whether the Third Circuit Court erred and failed to lawfully include evidence to properly consider and determine that it is not within the broad range of duty that police are allowed to maliciously case fix, alter evidence, fabricate pictures, and terrorize citizens, causing them to never again feel safe in the guardianship and protection of those in authority over them? This was in sever violation of Government Virtue, and was in severe violation of the Fourteenth Amendment? A court has repeatedly noted that "the physical entry of the home is the *chief evil* against which the

wording of the Fourth Amendment is directed . . . "New York v. Harris, 495 U.S. 14, 18, 110 S.Ct. 1640, 1643, 109 L.Ed.2d 13 (1990) quoting Payton v. New York, 445 U.S. 573, 585, 100 S.Ct. 1371, 1379, 63 L.Ed.2d 639 (1980) (emphasis added), quoting United States v. United States District Court, 407 U.S. 297, 313, 92 S.Ct. 2125, 2137, 32 L.Ed.2d 752, 757 (1972) and has held that a police officer's entry into a private residence "is *per se* unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions." Coolidge v. New Hampshire, 403 U.S. 443, 474, 99 S.Ct 2022, 2044, 29 L.Ed.2d 564 (1971)

XV Whether the Third Circuit erred and failed to lawfully include factually that all of the Government Authorities, including the Third Circuit Court of Appeals, the defendants Attorneys who themselves entered the damaging picture in their own motion for summary judgment, Petitioners own Attorney, the Police Officers involved, the Palmer Township Supervisors, the District Attorney, the United States Department of Justice, and now this Honorable United States Supreme Court, all to whom Petitioner dutifully, and by civic virtue, reported the crime of the false evidence created by the police, are, also, not all, by government virtue, honor and duty bound, just as much as Petitioner was as a citizen. This allows for corrupt government, and is of the utmost matter of national safety and importance. This all was in violation of Petitioner's First, Fourth, Sixth, Seventh, and Fourteenth Amendment right to petition the Government for a redress of grievances.

XVI Whether the Third Circuit Court erred and failed to lawfully include all evidence when ruling that Chief Fretz, as supervisor of the Officers, had to approve the charges with the false Officer Tracking Number (OTN), and the doctored pictures, and the altered dental flosser confiscated before probable cause, had no action against him? This was in violation of the First, Fourth, Fifth, Sixth, and Fourteenth Amendments. Petitioner has documented proof of "underhanded police work" that Defendant Fretz had to have prior knowledge of the incident and had to approve this "entrapment" before the illegal police complaint report could be presented to District Magistrate Litzenburger for probable cause on the afternoon of September 17, 1996. See Cardenas v. Wigen, No. 95-3500.

XVII Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling stating that Petitioners civil action lacks merit, when the Third Circuit Court totally circumvented and ignored that the police, by falsifying evidence did not stay within their scope of duty, but corruptibly stepped out of their scope of official duty by committing a colluded heinous crimeThis was in severe violation of the First, Fourth, Fifth, Sixth, Seventh, and Fourteenth Amendment? "The chief evil against which the wording of the Fourth Amendment is directed . . . " Harris, 495 U.S. at 18, 110 S.Ct. at 1643, 109 L.Ed.2d at 13. Nor is a person's privacy interests in his home diminished in any manner simply because a police officer desires to enter it in a non-investigatory capacity for "it is surely anomalous to say that the individual . . . is fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." This certainly does not say "is being framed for criminal behavior." Camara v. Municipal Court, 387 U.S. 523, 530, 87 S.Ct. 1727, 1731, 18 L.Ed.2d 930, 936 (1967) See also Erickson, 991 F.2d at 531-532. To the contrary, "even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority." Id., 387 U.S. at 530-531, 87 S.Ct. at 1732, 18 L.Ed.2d at 936. This is not to suggest the governmental interest for the intrusion is irrelevant to the question of reasonableness under the Fourth Amendment. The general test for reasonableness under the Fourth Amendment is always a "balancing of the need to search against the invasion which the search entails." Camara, 387 U.S. at 536-537, 87 S.Ct. at 1735, 18 L.Ed.2d at 940.

XVIII Whether the Third Circuit Court erred and failed to lawfully include evidence by its ruling which unconstitutionally prevents Petitioner a trial with a jury of her peers to judge the evidence Petitioner has to offer at the time of trial, especially, when factually, there was no probable cause and especially no evidence, except malicious false evidence, which makes this a national problem without fail? This was in severe violation of the Sixth Amendment, Seventh Amendment, and Fourteenth Amendment,(R. 38-39, Fed. R. Civ.P

XIX Whether the Third Circuit Court erred and failed to lawfully include evidence in wrongfully stating that "instead liability turns on whether the facts and circumstances within the charging officer's knowledge, *at the time charges are brought*, are sufficient to warrant a reasonable person to believe that an offense has been committed by the person to be charged", errs in assuming that the evidence was false free, and when the Petitioner proved to the Court the evidence was not false free, does this conclusion from the court still apply? This was in severe violation of the First Amendment, Fourth Amendment, and the Fourteenth Amendment? (People v. Duncan, supra, 42 Cal. 3d at p. 98) Officers Coopersmith and Koehler were at the residence to carry out a heinous crime of framing Petitioner with a crime that had never happened, using malicious, bogus, and altered evidence. "A proceeding under [Penal Code] section 1538.5 to suppress evidence is one in which a full hearing is held on the issues before the superior court *sitting as a finder of fact*. In such a proceeding the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor the exercise of that power, and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence." (People v. Lawler (1973) 9 Cal. 3d 156, 160) The defendant police officers, Coopersmith and Koehler, violated R. 103, Pa. R. Crim. P. Rule 103 of the Pennsylvania Rules of Criminal Procedure which clearly states that: an arrest institutes the proceedings. Since there was no arrest in this case, and the original police complaint contained a false Officer Tracking Number (OTN), there could have been no instituting of proceedings, and if there were no instituting of proceedings there could have been no criminal charges. Id. 130-131. Appellant contends that the law was clearly established at the time the constitutional violations occurred and that the Defendant officers were equipped with the knowledge of clearly established law and were objectively unreasonable; See, Siegert v. Gilley, 500 U.S. 226, 11 S. Ct. 1789 (1991); County Sacramento v. Lewis, 523 U.S. 833, 840-842, Note 5, 118 S. Ct. 1708 1998y Conn v. Gabbert, 526 U.S. 286, 119 S. Ct. 1292 (1999) Wilson v. Layne, 526 U.S. 603 (1999). The District Court did not resolve this issue of the Defendant officers because the record is clear that the Appellant was under malicious

"siege of arrest" inside her home prior to the illegal eviction. A person is "seized" when, by means of physical force or "show of authority," when his or her freedom of movement is restrained. Only when such restraints is imposed is that any foundation whatsoever for evoking constitutional safeguards. See PFA Order, R. 103, Pa. R.Crim.P, and U.S. v. Mendenhall, 446 U.S. 544, 553, 100 S. Ct. 870 (1980).

XX Whether the Third Circuit Court erred and failed to lawfully include evidence on the alerting of Petitioner regarding the falsifying of evidence. This was severely in violation of the First Amendment, Fourth Amendment, and the Fourteenth Amendment?

XXI Whether the Third Circuit Court erred and failed to lawfully include evidence by its denying Petitioner motion's "To Accept Affidavit", "To Lodge Exhibits," "Appointment of Council," "To order the District Court to transfer sections 5, 43, and 45," and the denial of these motions were an obstruction of justice? This was in violation of the First Amendment, Fourth Amendment, and the Fourteenth Amendment?

XXII Whether the Third Circuit Court erred and failed to lawfully include evidence in not properly confirming and ruling that there was a total undisputed lack of investigation, to the point of not questioning the Petitioner before Officer Coopersmith filed charges, at the hearing in front of Magistrate Litzenburger for Probable Cause, via their Department Detectives, their Chief of Police, nor the District Attorney's office? This was in violation of the First Amendment, Fourth Amendment, Fifth, Sixth and the Fourteenth Amendment?

XXIII Whether the Third Circuit Court erred and failed lawfully to include evidence by not properly considering and exploring the testimony of Officer Koehler reporting Koehler knew from prior incidents that Winters had a tendency to lie about living with Petitioner and that Winters had a tendency for suicide? This was in violation of the First Amendment, Fourth Amendment, and the Fourteenth Amendment?

XXIV Whether the Third Circuit Court erred and failed to lawfully include evidence in not properly reviewing and not properly considering the evidence that the Palmer Township Police had prior lawsuits filed against them for insufficient investigations and malicious prosecution claims? This was in violation of the First Amendment, Fourth Amendment, and the Fourteenth Amendment?

XXV Whether the Third Circuit Court erred and failed lawfully to include evidence by Petitioner that there was definite fabrication of evidence; unwise haste and total lack of due care in prosecuting Petitioner? This was in violation of the First Amendment, Fourth Amendment, and the Fourteenth Amendment?

XXVI Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering and further exploring the facts that the police were not reasonable, because the police considering all the circumstances, grossly failed to make any investigation such as a reasonable person would make to ensure the prosecution was not tainted by inaccurate, false, or incomplete evidence? This was in violation of the First Amendment and the Fourteenth Amendment?

XXVII Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering and not properly reviewing that the evidence, which formed the basis for arrest, was tainted, malicious, and false? This was in violation of the First Amendment to petition the Government for a redress of grievances, and the Fourteenth Amendment?

XXVIII Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering and not properly reviewing that this was not a routine domestic violence case, but a case based on lies, with a total lack of sufficient investigation and indicia of unreliability of Winters who approached the police? This was in severe violation of Petitioner's Fourth and Fourteenth Amendment, especially when the amendment stresses "*but upon probable cause, SUPPORTED BY OATH AND AFFIRMATION, and particularly describing the place to be searched, and the persons or things to be seized.*" This clearly does ***NOT***

state *"BUT UPON "FALSE" PROBABLE CAUSE, SUPPORTED BY FALSE OATH AND FALSE AFFIRMATION?"*

XXIX Whether the Third Circuit Court seriously erred and failed to lawfully include evidence, by deliberately ignoring, and not properly ruling on (out of time and no moving papers) the well documented, docket supported legal argument in Petitioners appeal reflecting Defendants Motion for Summary Judgment was grossly filed out of time when filed in June 1999? This was the most important discrepancy of procedure and totally ignored by the Court, and was not only in severe violation of all of Petitioners First, Fourth, Fifth, Sixth, and Fourteenth Constitutional rights, by Government Virtue (Slater v. Durchfort, B083907)

XXX Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling that the Defendants Motion for Judgment was filed grossly out of time, June 1999, instead of the Courts deadline ruling for March 1999, with no moving papers of procedure docketed proving a petition for a continuance? This is a violation of Petitioner's First Amendment right, and was in strict noncompliance with the courts own strict procedural process?

XXXI Whether the Third Circuit Court erred and failed to lawfully include evidence by deliberately ignoring and circumventing the extensive legal argument of ineffective assistance of Counsel in Petitioners brief? This was in violation of Petitioner's First Amendment rights?

XXXII Whether the Third Circuit court erred and failed to lawfully include evidence that Petitioner was afforded ineffective assistance of Counsel? This was in violation to Petitioner's First Amendment rights?

XXXIII Whether the Third Circuit Court erred and failed to lawfully include evidence that the Defendants were not entitled to Qualified Immunity against Petitioner's Fourth amendment claim of unreasonable seizure? The police were present at the home to cast Petitioner illegally from her home, not on a warrant to seize property, Fourth Amendment reads clearly *"shall not be violated?"*

XXXIV Whether the Third Circuit Court erred and failed to lawfully include evidence by ruling that the Defendants were entitled to Qualified Immunity, thereby permitting a broad scope of judgment and duty extended to tainted, malicious heinous intentions, false information, inaccuracy, fabricating of evidence, unwise hast, lack of due care in prosecutorial duty? This was in violation of Petitioner's of Petitioner's Fourteenth, Fourth and Sixth Amendment, "*against any unreasonable searches and seizure?*"

XXXV Whether the Third Circuit Court erred and failed to lawfully include evidence ruling the Defendants were not entitled to Qualified Immunity pursuant to defendants being sued under "personal capacity."?

XXXVI Whether the Third Circuit Court of Appeals erred and failed to lawfully include evidence by dismissing motions to accept into record the evidence of pictures against the Defendants, without an evidence hearing, or allowing the evidence to be revealed to a Jury of Petitioners peers? This was in violation of the Fourth, Sixth, Seventh and Fourteenth Amendment?

XXXVII Whether the Third Circuit Court of Appeals erred and failed to lawfully not include evidence that would further explore that Winters be held totally responsible for giving authorities a false Police report, when the Third Circuit Court should legally also hold the Police accountable for its part in the framing of Petitioner, when it was solely the Police that fabricated a false Officer Tracking Number (OTN) to protect the police from officially sending the framed Police Complaint Report to the Pennsylvania State Police, it solely was the Police that clicked the shutter on the camera, it solely was the Police that doctored and developed the pictures, which are clearly false old, already scarred over, non blood tissue scratches, several chest nipples, and especially not Winters hair under the armpit, and it solely was the Police that broke and altered the dental flosser to make it appear as though the flosser could have caused scratches on Winters body? This was severely in violation of Petitioners First, Fourth, Sixth, Seventh, and Fourteenth Amendment, and in extreme violation of the courts duty to

government virtue. These are in violation of the First through Fourteenth Amendments, which guards the citizens against corrupt government and a distorted form of government in which rulers serve their own interests at the expense of the common welfare?

XXXVIII Whether the Third Circuit Court of Appeals erred and failed to lawfully include evidence by blocking Petitioner from being able to produce her evidence of a tainted malicious police complaint against Petitioner to the right of a Trial by Jury, which was properly demanded? In violation of Due Process and the Fourteenth Amendment which says: nor shall any State deprive any person of *life, liberty, or property,* without due process of law....? This was also in violation of the Sixth Amendment.

XXXIX Whether the Third Circuit Court's erred and failed to lawfully include evidence in its ruling, a ruling that denied Petitioner substantive due process, procedural due process, and due process and protection, because the Courts ruling truly granted harm of liberty of law when the ruling is co-operating and agreeing with the heinous crimes committed by the Palmer Township Police set forth in this Civil Law Suit, thus violating the Fourteenth, Fourth and Sixth Amendment? The Constitutional rights of Petitioner to advocacy were severely suppressed in the legalism of this very keg-of-dynamite case. The Courts are dutibound to authority and the right to control or direct the actions of other, in accordance with law, morality, or custom, at ANY time during gained information, or legal procedure. The Third Circuit Court circumvented addressing any corruption of this case, which put national security at its highest risk by its very own Judicial system. The first ten Amendments of the Bill of Rights to the Constitution which restricts the federal government's power to ever interfere with certain basic rights of the people has to be brought back to life by our courts, for the welfare and security of the American Citizens Constitutional Government is ruled by a government in which the powers of the ruler or rulers are limited by a constitution which they must obey, especially to guard against a corrupt government?

XXXX Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling by denying Petitioner equal protection

according to the first section of the Fourteenth Amendment, that prohibits states from denying "any person.....the equal protection of the law?" This was in violation of the First, Fourth, Fifth, Sixth, and Fourteenth Amendment. The U.S. Supreme Court held in Graham v. Conner, 490 U.S. 386. 109 S. Ct. 1865 (1989) that "where a particular amendment provides an explicit textural, source of constitutional protection against a particular sort of government behavior, that amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." The Fourth Amendment is where the Appellant's arguments has its roots.

XXXXI Whether the Third Circuit Court erred and failed to lawfully include evidence in its ruling by being permissive to all these legal entities crimes set forth in this Civil Law Suit, thus promoting the liberty to form and carry out an on-going faction of their own special interests at the harm and expense of the common welfare of Petitioners liberty and freedom?

XXXXII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering in their ruling the "General Welfare Clause" in Article One, Section Eight of the Constitution, which gives Congress power to provide for "the general welfare of the United States?"

XXXXIII Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly considering the totality of the implied powers of Congress to make all laws that are "necessary and proper" for carrying out the powers expressly delegated to it by the Constitution of the United States of America (Article One, Section Eight)?

XXXXIV Whether the Third Circuit Court erred and failed in its ruling to lawfully include evidence properly considering all the law of nature or natural law of Petitioner to gain and protect a more safe environment for herself and the Nation at large by fighting this case through the law of her Mother Land?

XXXXV Whether the Third Circuit Court erred and failed to lawfully include evidence the PFA did not order restoration of possession of property, and that it was illegal that Winters, or no other adult person was present to take possession of the home when the Officers evicted Petitioner from her solely leased home the early morning of September 15, 1996, 2:30 A.M., in addition, deposition testimony confirmed, the Officers would not procedurally allow Petitioner to lock and secure her home upon departure, leaving and Petitioner's residence open, unsafe, and unsecured? Petitioner had a dual master lock that had to be locked by key only for the downstairs door? This was in severe violation of the rights of a citizen to be secure in their own home, and never be deprived of their property? This is in violation of Amendment One, Amendment Four, Amendment Five, Amendment Fourteen? This case must be remanded for trial on the grounds of malicious prosecution. Smith v. TV-3 Inc., d.b.a. KLTV, Channel 7, 6:91cv959 (E.D. Texas).

XXXXVI Whether the Third Circuit Court erred and failed by its ruling to lawfully include evidence which denied Petitioner from being able to produce her evidence of a tainted, malicious, original Police Complaint Report directly documented by Defendants to a Jury of Petitioners peers?

XXXXVII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering or properly ruling that the original Police Incident Report of September 15, 1996, officially recorded a contriving report that reported in the space for the "Type of Complaint" as an expungement, and that the total timing from Police arrival to Police clearing was only one minute? This was in violation of Petitioners right to procedural due process, and is a sever matter of national security, and is in total conflict of our constitution and unalienable rights.

XXXXVIII Whether the Third Circuit Court erred and failed to lawfully include evidence properly considering that the Palmer Township Police had a vile pattern and practice of harassing Petitioner since 1989? XXXXIX Whether the Third Circuit Court erred and failed to lawfully include evidence by not properly

regarding or not properly considering Petitioner's right to private domain, the individuals life that is not subject to governmental control, a control in this case, that was definitely corrupt, tainted, thus creating an unsafe environment for Petitioner and an even greater threat to National security, peace and welfare, which is in total conflict of our Constitution of the United States, procedural due process, and especially Petitioners unalienable (inalienable) rights? All of above case law is relevant to all questions I - XXXXIX, and all questions I - XXXXIX are related to Petitioner's violations of the First, Fourth, Fifth, Sixth, and Fourteenth Amendments. Petitioner will not settle for a judicial mentality in civil practice that says: Do as we mean, Not as we unclearly say! Yerk v. City of Allentown, (E.D. Pa. No. 95-3032),y Schreiber v. Honey Brook, (E.D. Pa. 94-cv-2567),y Patterson v. Pa. Bd. of Probation and Parole, (E.D. Pa. 93-2585).y

CONCLUSION

__Forthwith proclaiming the reason for National safety and in preserving the Constitution of the United States, Petitioners consistency from the first filing of this Civil Rights Claim, proving a pattern and practice by the Palmer Township Police of Malicious Prosecution, from 1989 to post 9/15/96, to 1998, as stated, the Petition for a writ of certiorari should be granted, the judgment of the of the United States District Court for the Eastern District of Pennsylvania should be reversed, and the case should be remanded for further proceedings. Petitioner should also be granted an evidence hearing on the hard evidence that Petitioner has in her possession. Petitioner also requests that this highest court of our land orders this case be further investigated through the United States Department of Justice, Federal Bureau of Investigation, or other Federal investigation entity. Petitioner has done the best that she could do on this writ, and asks that that it is taken into consideration as a citizen of these Great United States who is not looking for a halo!

Dated February 7, 2001

Respectfully submitted,

Lorraina J. Telepo, Pro Se

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LORRAINA J. TELEPO,	}	CIVIL ACTION
	}	NO. 97-6053
Plaintiff,	}	
v.	}	FILED
	}	FEB 26, 1999
PALMER TOWNSHIP, ET AL.,	}	
	}	
Defendants.	}	

ORDER

AND NOW, this 26th day of February, 1999, upon consideration of defendants' motion for summary judgment (doc. no. 15), the responses thereto, and after oral argument with counsel for the parties, it is hereby ORDERED that defendants' motion for summary judgment is GRANTED.

It is further ORDERED that judgment is ENTERED in favor of defendants and against plaintiff as to plaintiff's federal claims, and in favor of the municipality against plaintiff with regard to plaintiff's state law defamation claim.

It is further ORDERED that plaintiff's state law defamation claim as to the individual defendants and the Palmer Township Police Department is DISMISSED WITHOUT PREJUDICE.

Clerk shall mark this case CLOSED.

AND IT IS SO ORDERED.

"s/Eduardo C. Robreno"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LORRAINA J. TELEPO,	}	CIVIL ACTION
	}	NO. 97-6053
Plaintiff,	}	
v.	}	FILED
	}	FEB 26, 1999
PALMER TOWNSHIP, ET AL.,	}	
	}	
Defendants.	}	

MEMORANDUM

EDUARDO C. ROBRENO, J. FEBRUARY 26, 1999

I. INTRODUCTION

This is a civil rights case arising out of police intervention in a domestic dispute. Plaintiff alleges that defendants, Palmer Township, Palmer Township Police Department, Chief of Police Bruce Fretz, Officer Susan Coopersmith, and Officer Glenn Koehler, during the course of executing a Protection from Abuse Order obtained by plaintiff's husband against plaintiff, and in retaliation for plaintiff having been openly critical of the Palmer Township Police Department on a prior occasion, unreasonably seized her property, denied her a liberty interest, used excessive force against her, defamed her in the local press, and unlawfully filed a criminal complaint against her. Before the Court is defendant's motion for summary judgment. For the following reasons, the Court will grant the motion.

II. BACKGROUND

The following facts are not in dispute or are construed in the light most favorable to plaintiff. On September 14, 1996, plaintiff and her husband, Harold Winters ("Winters"), had an altercation at plaintiff's residence. At approximately 11:30 p.m., Winters left the residence and went to the Palmer Township Police Department. While at the police station, Winters told Officer Susan Coopersmith

("Officer Coopersmith") that plaintiff allegedly scratched Winters on his chest with an electric dental flosser, punched him about the body, and smashed the windshield of Winters' van. In turn, Officer Coopersmith informed Winters that he could obtain an emergency Protection from Abuse ("PFA") Order against plaintiff. Also while at the police station, Officer Coopersmith caused another officer to take photographs of the injuries to Winters' chest. Thereafter, Winters drove his vehicle, following behind Officer Coopersmith, to the office of the District Justice in Northampton County some twenty minutes away to request the issuance of such order. The District Justice, after speaking with Winters, signed an emergency PFA Order, ordering plaintiff to refrain from abusing Winters and evicting plaintiff from her residence.

At approximately 1:30 a.m., Officer Coopersmith and Officer Glenn Koehler ("Officer Koehler") arrived at plaintiff's residence. The officers served plaintiff with the emergency PFA Order, and advised plaintiff that, pursuant to the order, she would have to leave the residence for approximately one and a half days. Plaintiff asserted to the officers that she was the sole leaseholder of the residence and that Winters did not reside there. Notwithstanding plaintiff's protestations, the officers proceeded to execute the PFA Order and removed plaintiff from her residence.

While inside the residence, the officers informed plaintiff that Winters had accused her of assaulting him with an electric dental flosser and that Winters was going to press criminal charges against plaintiff. Officer Koehler asked plaintiff to produce the dental flosser that was allegedly used to attack Winters. Plaintiff retrieved the dental flosser, as requested, and handed it to Officer Koehler, who then told plaintiff that he had to "take" the dental flosser with him.

Before departing with the officers, plaintiff requested permission to change out of her nightclothes. The officers agreed plaintiff could change her clothes in the bathroom. While changing, plaintiff shut the bathroom door. Officer Coopersmith then pushed the bathroom door open, and told plaintiff that the bathroom door had to remain open while she changed. When plaintiff attempted to shut the bathroom door again, Officer Coopersmith "threw" plaintiff's arm away, demanding that the bathroom door stay open.

Thereafter, the officers escorted plaintiff to her car, and plaintiff spent the night away from her residence.

On September 17, 1996, Officer Coopersmith filed simple assault and harassment charges against plaintiff based on the alleged altercation that occurred between plaintiff and Winters.[1] On October 15, 1996, a preliminary hearing was held on the simple assault and harassment charges against plaintiff. At that hearing, Winters testified that plaintiff had assaulted him with the dental flosser. Photographs taken by the police on the night of September 14, 1996 depicting Winters' injuries were entered as evidence. The District Justice concluded that the Commonwealth made out a prima facie case for simple assault and harassment, and the case was bound over for trial. Subsequent to the filing of the charges, Winters retracted his statement, and as a result, a nolle prosequi was entered as to the simple assault and harassment charges against plaintiff.[2] On December 11, 1996, plaintiff's record as to these criminal charges was expunged.

Plaintiff claims that the motive for defendants violating her constitutional rights arose from an incident involving the Palmer Township and Danville Police Departments. On June 30, 1996, plaintiff attempted to contact her adult son in Danville, Pennsylvania via certified mail. On July 26, 1996, plaintiff received a letter from her son's attorney, which stated that her son deemed plaintiff's contact as harassing, that he did not want to have any further contact with plaintiff, that he had contacted the police regarding this matter, and that any further contact by plaintiff would result in criminal prosecution. On August 9, 1996 around 10:00 p.m., at the request of the Danville Police Department, Officer

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[1] Although not directly related to the instant motion, the record also reflects that during the relevant period, Winters attempted to obtain a second PFA Order against plaintiff in Lehigh County. Defs.' Mot. for Summ. J., App. § 6.

[2] Subsequent to the preliminary hearing where Winters testified that plaintiff had assaulted him with the dental flosser, Winters sought to recant his testimony at his deposition. Winters, however, has not offered a satisfactory explanation for the dramatic change from his testimony under oath at the preliminary hearing. See Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991); Cronin v. West Whiteland Township, 994 F. Supp. 595, 596 n.2 (E.D. Pa. 1998) (finding that a party may not create a genuine issue of material fact by mere recantation, without a satisfactory explanation). In any event, the Court need not determine which version of events is correct, since it is the fact that Winters' sworn testimony was given at the preliminary hearing, and not the truth of the testimony, that is relevant in this case.

Wayne Smith of the Palmer Township Police Department went to plaintiff's residence and delivered the following message to plaintiff: "If you continue to attempt to contact your son, you will be charged criminally." Thereafter, plaintiff wrote a letter to the Palmer Township and Danville Police Departments complaining of what she claimed was the officer's unprovoked, inappropriate, and harassing conduct of invading plaintiff's privacy by delivering a threatening message at such a late hour. No disciplinary action was taken against Officer Smith or anyone in the Palmer Township and Danville Police Departments as a result of plaintiff's letter. This incident hereinafter will be referred to as the "Danville incident."

Plaintiff asserts eight (8) counts against the defendants and seeks relief under 42 U.S.C. § 1983:[3] (1) defendants engaged in an unreasonable seizure of her property and denial of plaintiff's liberty interest in wrongfully evicting plaintiff from her home where she was the sole leaseholder, pursuant to the Fourth and Fourteenth Amendments; (2) denial of equal protection, pursuant to the Fourth, Fifth and Fourteenth Amendments;[4] (3) use of excessive force in throwing plaintiff's arm away from the bathroom door, pursuant to the Fourth and Fourteenth Amendments; (4) malicious prosecution of plaintiff for simple assault and harassment without probable cause, in violation of the Fourth and Fourteenth Amendments; (5) Pennsylvania law defamation claim for illegally releasing information regarding the simple assault and harassment charges to the local press; (6) defendants unreasonably seized plaintiff's property, namely the dental flosser, without a warrant, pursuant to the Fourth Amendment; (7) Chief Bruce Fretz ("Chief Fretz") has supervisory liability for approving the filing the of the criminal charges against plaintiff, and the failure to train and supervise officers in the use of proper physical force and appropriate

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[3] 42 U.S.C. § 1983 provides:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . . 42 U.S.C. § 1983.

[4] Plaintiff has conceded that there is no evidence of gender discrimination, therefore, summary judgment shall be entered in defendants' favor and against plaintiff as to plaintiff's equal protection claim. Pl.'s Resp., § C, at 11.

execution of PFA Orders; and (8) Palmer Township and the Palmer Township Police Department have municipal liability and were deliberately indifferent to the custom and practice of officers using excessive force and improperly evicting people pursuant to a PFA Order. Plaintiff claims that defendants violated her civil rights in retaliation for plaintiff's earlier complaint concerning the inappropriate conduct of the Palmer Township Police Department in the Danville incident. Defendants assert that all of plaintiff's claims are legally flawed and that, therefore, they are entitled to summary judgment in their favor.

III. LEGAL STANDARD

A. Summary Judgment Pursuant to Fed. R. Civ. P. 56 (c).

Summary judgment is appropriate if the moving party can "show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348 (1986). The Court must accept the non-movant's version of the facts as true, and resolve conflicts in the non-movant's favor. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113, S. Ct. 1262 (1993).

The moving party bears the initial burden of demonstrating the absence of genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548 (1986). Once the movant has done so, however, the non-moving party cannot rest on its pleadings. See Fed. R. Civ. P. 56 (e). Rather, the non-movant must then "make a showing sufficient to establish the existence of every element essential to his case, based on the affidavits or by depositions and admissions on file." Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505 (1986).

IV. ANALYSIS

In assessing whether summary judgment should be granted, the Court will address each of plaintiff's claims in turn.

A. Defendants Are Entitled to Qualified Immunity Against Plaintiff's Fourth Amendment Claim of Unreasonable Seizure.

Plaintiff alleges that defendants engaged in an unreasonable seizure of her property by wrongfully evicting plaintiff from her residence, by not conducting an independent investigation of Winters' allegations of abuse before advising Winters that he had a right to request an emergency PFA Order, by encouraging Winters to request a PFA Order, particularly by leading Winters to the office of the District Justice, and by not investigating plaintiff's assertions that Winters did not live at the residence before executing the PFA Order, in violation of the Fourth Amendment. Plaintiff also alleges that defendants' improper eviction was a deprivation of plaintiff's liberty interest, in violation of the Fourteenth Amendment. In response, defendants argue that Officers Coopersmith and Koehler are entitled to qualified immunity because the officers' actions were objectively reasonable in executing a facially valid PFA Order.[5]

The test for the applicability of qualified immunity is well-settled:

> Government officials performing discretionary functions are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known . . . . [T]he inquiry is whether a reasonable officer could have believed that his or her conduct was lawful, in light of clearly established law and the information in the officer's possession.

Sharrar v. Felsing, 128 F.3d 810, 826 (3d Cir. 1997) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982)). Under

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[5] Defendants also assert that Officers Coopersmith and Koehler are entitled to absolute immunity. The Court need not reach this issue because it finds that, under the objectively reasonable standard, qualified immunity provides ample protection against mistaken judgments for "all but the plainly incompetent or those who knowingly violate the law." Hunter v. Bryant, 502 U.S. 224, 229, 112 S. Ct. 534, 536 (1991). Therefore, the Court will only address whether defendants are entitled to qualified immunity. See Johnson v. City of Chester, 10 F. Supp.2d 482, 487 n.5 (E.D. Pa. 1998) ("Government officials are accorded qualified rather than absolute immunity in order to accommodate two important interests: the officials' interest in performing their duties without the fear of constantly defending themselves against insubstantial claims for damages, and the public's interest in recovering damages when government officials unreasonably invade or violate individual rights under the Constitutions and laws of the United States.")

this test, in section 1983 actions, particularly those involving the Fourth Amendment, qualified immunity decisions require the Court to determine the currently applicable law, and whether that law was clearly established at the time the alleged constitutional violation occurred. See Rogers v. Powell, 120 F.3d 446, 453 (3d Cir. 1997). If the law was clearly established at the time of the conduct at issue, then the Court must determine whether the actions of the officers, equipped with the knowledge of clearly established law, were objectively reasonable. See Sharrar v. Felsing, 128 F.3d 810, 828 (3d Cir. 1997). Moreover, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640, 107 S. Ct. 3034 (1987).

Initially, with regard to plaintiff's Fourteenth Amendment claim, the Court finds that plaintiff has not specified what liberty interest was violated by defendants' allegedly unlawful act of eviction. Nowhere in plaintiff's complaint does plaintiff indicate a violation of a Fourteenth Amendment liberty interest, and only briefly does plaintiff mention in her response to defendants' motion for summary judgment that an arrest without probable cause is a deprivation of liberty and actionable under section 1983. The Court need not reach the issue of whether an arrest under these circumstances violates a Fourteenth Amendment liberty interest because the record is conclusive that plaintiff was never arrested. An arrest is:

> the taking, seizing, or detaining of the person of another, (1) by touching or putting hands on the arrestee; (2) or by any act that indicates an intention to take the arrestee into custody and that subjects the arrestee to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested. There can be no arrest where there is no restraint and the restraint must be under real or pretended legal authority. However, the detention of a person need not be accompanied by formal words of arrest or station house booking in order to constitute "arrest." Whether the restraint or detainment was sufficient to rise to the level of arrest will in many cases turn on the length of the detention, and the degree of restraint. The ultimate inquiry is simply whether there is a formal arrest or restraint

on freedom of movement of the degree associate with formal arrest.

5 Am. Jur. 2d Arrest § 2 (1995) (footnotes omitted). See also United States v. Mendenhall, 446 U.S. 544, 553, 100 S. Ct. 1870 (1980), reh'g denied, 448 U.S. 908, 100 S. Ct. 3051 (1980) ("We adhere to the view that a person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation whatsoever for invoking constitutional safeguards."); United States v. Lampkin, 464 F.2d 1093 (3d Cir 1972) (citing definition of arrest as stated in previous version of volume 5, American Jurisprudence Second); Owens v. County of Delaware, No. 95-4282, 1996 WL 476616, at *11 (E.D. Pa. Aug. 15, 1996) ("[A]lthough precise definitions are not possible, one court has noted that 'an arrest is a seizure characterized by highly intrusive or lengthy search or detention.'") (quoting United States v. Espinosa, 782 F.2d 888, 891 (10th Cir. 1986)); Commonwealth v. Lovette, 450 A.2d 975, 977 (Pa. 1982) ("We have defined an arrest as any act that indicates an intention to take the person into custody and subjects him to the actual control and will of the person making the arrest."); Restatement (Second) of Torts § 112 (1965) ("An arrest is the taking of another into the custody of the actor for the actual or purported purpose of bringing the other before a court, or of otherwise securing the administration of the law.")

In this case, there is no claim that plaintiff was restrained, did not have freedom of movement, or that restrictions were imposed upon plaintiff. Requiring a person to leave her residence pursuant to a PFA Order does not rise to the level of an arrest. Therefore, the Court will grant summary judgment in favor of defendants as to plaintiff's Fourteenth Amendment claim.

As to plaintiff's claims under the Fourth Amendment, plaintiff's right to be free from unreasonable searches and seizure, the Court agrees that such a right was clearly established at the time the incident occurred. See Maryland v. Garrison, 480 U.S. 79, 86, 107 S. Ct. 1013 (1987); Katz v. United States, 389 U.S. 347, 88 S. Ct. 507 (1967). The issue, then, is whether, in light of the clearly established law and information in the officers' possession, the officers' conduct in executing the PFA Order was objectively

reasonable, such that a reasonable officer possessing the same information would have believed his conduct to be lawful.

The uncontested facts show that Winters voluntarily went to the police station to report the alleged abuse by plaintiff. Defs.' Mot. for Summ. J., App. § 9, Pl.'s Dep. at 93. Winters told Officer Coopersmith of the alleged abuse by plaintiff with the dental flosser. Pl.'s Resp., App. § 11, Coopersmith Dep. at 8. Winters showed his injuries to Officer Coopersmith, which were documented by police photographs. Id. at 8, 12. Upon being advised of his right to request an emergency PFA Order, Winters chose to do so and drove in his own vehicle to the office of the District Justice, following behind Officer Coopersmith. Id. at 9-10. Winters himself spoke to the District Justice and requested an emergency PFA Order against plaintiff at the address of plaintiff's residence. Id. at 10, 13-14. The District Justice granted Winters an emergency PFA Order ordering plaintiff to refrain from abusing Winters, and evicting plaintiff from her residence. Id. at 14. Winters signed the emergency PFA Order, indicating that emergency relief was required because there was "immediate and present danger of abuse" by plaintiff. Defs.' Mot. for Summ. J., App. § 1. With the facially lawful order in hand, Officers Coopersmith and Koehler proceeded to evict plaintiff from the residence. The Court finds that the conduct of Officers Coopersmith and Koehler in evicting plaintiff pursuant to a facially valid PFA Order was objectively reasonable.[6]

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[6] The conduct of Officers Coopersmith and Koehler was not only reasonable, it may have been mandated by law. The Protection From Abuse Act permits a plaintiff to petition the court for relief from abuse by a defendant on behalf of plaintiff, plaintiff's minor children, or an incompetent adult. 23 Pa. Cons. Stat. Ann. §§ 6101-6118. "The purpose of the Protection from Abuse Act is to protect victims of domestic violence from the perpetrators of such abuse." Lee v. Carney, 645 A.2d 1363, 1364 (Pa. Super. 1994). To provide relief, the court can order the defendant to refrain from abusing the plaintiff; grant possession of the residence to the plaintiff by evicting the defendant; award temporary custody or visitation rights with minor children; prohibit the defendant from having any contact with the plaintiff; order the defendant to relinquish any weapons used to abuse the plaintiff; direct the defendant to pay the plaintiff for reasonable losses; and direct the defendant to refrain from stalking or harassing the plaintiff. 23 Pa. Cons. Stat. Ann. § 6108(a).

The Pennsylvania Superior Court noted:

The provisions of the Protection From Abuse Act . . . , as well as the various publicly and privately funded services provided to victims of domestic abuse were designed to ameliorate the inadequacies of the traditional approach to domestic

Plaintiff also claims that the officers acted in retaliation for plaintiff's prior complaint based on the Danville incident by actively encouraging Winters to get the emergency PFA Order in order to evict plaintiff from her residence. This contention, even if true, is irrelevant. This is so because the qualified immunity inquiry is an objective one, which asks how a reasonable officer would have acted under these circumstances. Motive, on the other hand, involves a subjective appreciation of the individual officer's state of mind. See Parkhurst v. Trapp, 77 F.3d 707, 712 (3d Cir. 1996) ("The objective facts control a decision on summary judgment [to determine whether conduct was objectively reasonable], regardless of allegations of intent.") (quoting Anderson v. Creighton, 483 U.S. 635, 641, 107 S. Ct. 3034, 3040 (1987)). The bottom line is that, regardless of motive, Officers Coopersmith's and Koehler's conduct in executing a court order issued by a District Justice pursuant to state law upon the request by the alleged victim in this case was objectively reasonable.

Plaintiff also argues that the officers should have further investigated Winters' allegation that, in fact, he was abused by plaintiff and lived at plaintiff's residence before evicting plaintiff. However, the Court notes that on the night of the incident, Winters told the District Justice, in the presence of Officer Coopersmith, that he lived at plaintiff's residence, Pl.'s Resp., App. § 11, Coopersmith Dep. at 14, and Winters signed the PFA Order that listed his address as plaintiff's residence. Defs.' Mot. for Summ. J., App. § 1. Subsequently, Winters testified under oath at the preliminary hearing concerning the criminal charges against plaintiff that he resided at plaintiff's residence. Id., App. § 7, at 17.

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violence . . . . [It] will be wholly ineffectual, however, if the police, the courts and counsel fail to fulfill their express, statutory obligations to assist victims of such abuse to pursue the benefits our "vanguard" reforms offer.
Melvin v. Melvin, 580 A.2d 811, 815 (Pa. Super. 1990).

The United States Congress recognizing the unique dangers posed by domestic violence, that traditional responses have failed to protect victim, and that arrests can stop abuse, has sought to "encourage States, Indian tribal governments, and units of local government to treat domestic violence as a serious violation of criminal law" by making grants available to states that, inter alia, "encourage or mandate arrests of domestic violence offenders based on probable cause that an offense has been committed." 42 U.S.C. § 3796hh; see also Cronin v. West Whiteland Township, 994 F. Supp. 595, 600 n.9 (E.D. Pa. 1998).

Additionally, plaintiff cites no authority that imposes upon police officers a duty to investigate prior to executing a facially lawful PFA Order issued by a judicial officer.[7] The Court's own research has found no authority within either the Protection from Abuse Act or case law in this circuit mandating that an officer conduct further investigation before informing an abused person of his right to seek a PFA Order or before executing a facially lawful PFA Order. To the contrary, section 6105 (b) of the Protection from Abuse Act appears to require absolutely that police officers give to a person claiming to be the victim of domestic violence written and oral notice of domestic violence services in the community, including the person's right to request a PFA Order.[8] Moreover, the statute contemplates that police officers will enforce PFA Orders against persons accused of committing domestic violence.[9]

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[7] By analogy, as a general proposition, a police officer executing a facially valid arrest warrant issued by a judicial officer has no duty "'to investigate independently every claim of innocence, whether the claim is based on mistaken identity' or otherwise. Law enforcement officers who arrest solely on the basis of such a warrant are immune from suits alleging a Constitutional violation." Kis v. County of Schuylkill, 866 F. Supp. 1462, 1469 (E.D. Pa. 1994) (quoting Baker v. McCollan, 443 U.S. 137, 144, 99 S. Ct. 2689, 2694 (1979)).

[8] Section 6105(b) reads as follows:

Each law enforcement agency shall provide the abused person with oral and written notice of the availability of safe shelter and of domestic violence services in the community, including the hotline number for domestic violence services. The written notice . . . shall include the following statement:

"If you are the victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from domestic abuse pursuant to the Protection From Abuse Act, which could include the following:
(1) An order restraining the abuser from further acts of abuse.
(2) An order directing the abuser to leave your household.
(3) An order preventing the abuser from entering your residence, school, business, or place of employment
(4) An order awarding you or the other parent temporary custody of or temporary visitation with your child or children.
(5) An order directing the abuser to pay support to you and the minor children if the abuser has the legal obligation to do so." 23 Pa. Cons. Stat. Ann. § 6105(b).

[9] Section 6106(g) states:

The petition and orders shall be served upon the defendant, and orders shall be served upon the police departments with appropriate jurisdiction to enforce the orders. Orders shall be promptly served upon the police. Failure to serve shall not stay the effects of a valid order.
23 Pa. Cons. Stat. Ann. § 6106(g).

Therefore, the Court finds that Officers Coopersmith and Koehler under no duty to conduct their own investigation prior to informing Winters of his right to request a PFA Order or before executing a facially valid PFA Order upon plaintiff.

The Court concludes that while plaintiff had a clearly established right to be free from unreasonable interference by Officers Coopersmith and Koehler, the conduct of Officers Coopersmith and Koehler in executing the facially valid PFA Order was objectively reasonable. Therefore, Officers Coopersmith and Koehler are entitled to qualified immunity against plaintiff's Fourth Amendment claim, and defendants are entitled to summary judgment as a matter of law as to this issue.

B. Plaintiff Has Failed to Show that Defendants Used Excessive Force.

Plaintiff alleges that defendants violated her Fourth and Fourteenth Amendment rights by using excessive force to "throw" plaintiff's arm away from the bathroom door. Defs.' Mot. for Summ. J., App. § 9, Pl.'s Dep. at 110, 117-18. Plaintiff contends that as a result of the allegedly excessive force used by Officer Coopersmith, plaintiff suffered tenderness in the right arm, nightmares, sleep disturbances, anxiety, disorientation, depression, stress related symptoms, loss of energy and stamina, inability to trust police or authority, and personal violation. Pl.'s Compl. at ¶ 52. Plaintiff did not seek immediate medical attention, but worked on her arm through "reflexology," which plaintiff is trained in.[10] Defs.' Mot. for Summ. J., App. § 9, Pl.'s Dep. at 118. Plaintiff first went to see a doctor regarding aches in her right arm approximately one year after the incident, Id. at App. § 13, and the doctor diagnosed plaintiff as having "overwork syndrome." Id. at App. § 9, Pl.'s Dep. at 117-18.

In Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865 (1989), the Supreme Court held that all claims that law enforcement officers have used excessive force are to be analyzed under the Fourth

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[10] In her deposition, plaintiff defines reflexology as "an integrative biological health service," where pressure is applied to the reflex areas of the body, which consist of 7,200 nerve endings in each hand and foot. Reflexology "encourages improved instruction to each and every single organ and part of your body, thus persuading the body to biologically self-correct." Defs.' Mot. for Summ. J., App. § 9, Pl.'s Dep. at 13.

Amendment "reasonableness" standard. Id. at 394-95. Thus, plaintiff's excessive force claim is properly analyzed under the Fourth Amendment, rather than the Fourteenth Amendment.

In assessing plaintiff's excessive force claim under the Fourth Amendment, the issue is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Graham, 490 U.S. at 397. "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," violates the Fourth Amendment. Id. (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (1973), cert. denied, 414 U.S. 1033, 94 S. Ct. 462 (1973)). The Court's assessment of reasonableness "must embody allowance for the fact that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation." Id.

In this case, summary judgment is appropriate if, as a matter of law, the evidence would not support a reasonable jury finding that the officers' actions were objectively unreasonable. Groman v. Township of Manalapan, 47 F.3d 628, 635 (3d Cir. 1995). Plaintiff has presented the following evidence to the Court regarding Officer Coopersmith's use of excessive force:

> So I went into the bathroom to start changing. And I closed the door behind me. And I was proceeding to put on my bra . . . . And Susan Coopersmith opened the door. And I went to close the door again and she took and threw my arm away and said the door will have to stay open and she had to watch me.

Defs.' Mot. for Summ. J., App. § 9, Pl.'s Dep. at 110. Plaintiff further describes that Officer Coopersmith "took my hand and threw my hand over pretty hard." Id. at 118. The record reveals no other evidence that either Officer Coopersmith or Officer Koehler used objectively unreasonable force in removing plaintiff from the premises. The Court finds that a reasonable jury would conclude that the force utilized by Officer Coopersmith in order to maintain a watchful over plaintiff was objectively reasonable. Thus, in the context of executing a PFA Order in a potentially volatile domestic situation, Officer Coopersmith's use of force to monitor plaintiff's activities in order to ensure the safety of plaintiff and the officers

alike, and where plaintiff suffered the slightest of injury, if at all, was objectively reasonable. See Cronin v. West Whiteland Township, 994 F. Supp. 595, 601 (E.D. Pa. 1998) (noting the recognized "combustible nature of domestic disputes") (quoting Tierney v. Davidson, 133 F.3d 189, 197 (2d Cir. 1998)). Accordingly, Officers Coopersmith and Koehler are entitled to summary judgment with regard to plaintiff's claim of excessive force in violation of the Fourth Amendment.

C. Plaintiff Has Failed to Show That the Officers Unreasonably Seized the Dental Flosser As Evidence.

Plaintiff argues that Officer Koehler, in violation of the Fourth Amendment, conducted a warrantless seizure of the weapon that allegedly was used to inflict injury upon Winters, the dental flosser, without informing plaintiff that she had the right to refuse. Defendants assert that plaintiff consented to the seizure of the dental flosser and, therefore, there is no Fourth Amendment violation.

An officer acting pursuant to valid consent can conduct a warrantless search without violating the Fourth Amendment. See Schneckloth v. Bustamonte, 412 U.S. 218, 222-23, 93 S. Ct. 2041 (1973). In order for the consent to be valid, it must shown by a preponderance of the evidence that the consent was freely and voluntarily given. See id. (citing Bumper v. North Carolina, 391 U.S. 543, 548, 88 S. Ct. 1788, 1792 (1968)). The Court must consider the totality of the circumstances to determine whether the consent was freely given. See United States v. Deutsch, 987 F.2d 878, 883 (2nd Cir. 1993). Courts consider certain factors in determining whether consent was voluntary, i.e., "the age of the accused, his education, his intelligence, whether he was advised of his constitutional rights, and whether the questioning was repeated and prolonged." United States v. Kim, 27 F.3d 947, 955 (3d Cir. 1994), cert. denied, 513 U.S. 1110, 115 S. Ct. 900 (1995); see also United States v. Velasquez, 885 F.2d 1076, 1081-83 (3d Cir. 1989), cert. denied, 494 U.S. 1017, 110 S. Ct. 1321 (1990). Knowledge of the right to refuse to consent prior to consenting is one factor to be taken into account, but such knowledge does not have to be established as a prerequisite to establishing voluntary consent. See Schneckloth, 412 U.S. at 227, 231-34.

In this case, plaintiff testified that one of the officers told her that Winters was going to press criminal charges against plaintiff for allegedly assaulting Winters with a dental flosser. Defs.' Mot. for Summ. J., App. § 9, Pl.'s Dep. at 108-09. Officer Koehler then directed plaintiff to "go get it [the dental flosser]." Id. at 109. Plaintiff testified:

> I went into the bathroom. I got [the dental flosser], as [Officer Koehler] ordered, with . . . . both the tips. And I went back out and gave him the dental flosser. . . . He left, . . . took [the dental flosser] somewhere, came back up and he just said to me, I have to take this. And I didn't . . . argue with him. I didn't question him.

Id.

The record reveals that plaintiff is a fifty-two year old high school graduate. There is no evidence that plaintiff was under the influence of alcohol or drugs. Nor does the evidence show that Officer Koehler threatened, intimidated, or coerced plaintiff into retrieving the dental flosser, or obtained the dental flosser through subterfuge or deception. Plaintiff was not under arrest, or otherwise detained, in police custody, or subjected to prolonged or repeated questioning. Further, plaintiff's testimony reveals that plaintiff promptly acquiesced, she did not object to Officer Koehler's request, and that she knew Winters intended to press criminal charges against her. Therefore, the Court finds that, under the total circumstances of this case, plaintiff voluntarily consented to Officer Koehler's seizure of the dental flosser. Defendants are entitled to summary judgment with regard to plaintiff's claim that Officer Koehler's seizure of the dental flosser violated the Fourth Amendment.

D. Plaintiff Has Failed To State A Viable Claim For Malicious Prosecution.

Plaintiff avers that defendants, particularly Officer Coopersmith, filed criminal charges of simple assault and harassment without probable cause for retaliatory purposes, in violation of the Fourth and Fourteenth Amendments.[11] Defendants

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[11] Plaintiff concedes that Officer Koehler should not be named as a defendant as to the issue of malicious prosecution because he had no involvement in the criminal

argue that plaintiff fails to establish either that she was seized for purposes of creating a deprivation of liberty or that there was an absence probable cause. Alternatively, defendants posit that they are entitled to qualified immunity. Given that the Court concludes that there is no genuine issue of material fact as to the presence of probable cause, there is no need to address defendants' arguments concerning whether plaintiff was seized for purposes of malicious prosecution or that defendants are entitled to qualified immunity.

A civil rights claim for malicious prosecution is actionable under section 1983. See Losch v. Borough of Parkesburg, Pennsylvania, 736 F.2d 903, 907-08 (3d Cir. 1984) ("It is clear that the filing of charges without probable cause and for reasons of personal animosity is actionable under § 1983. Similarly, institution of criminal action to penalize the exercise of one's First Amendment rights is a deprivation cognizable under § 1983."). In Albright v. Oliver, 510 U.S. 266, 114 S. Ct. 807 (1994), reh'g denied, 510 U.S. 1215, 114 S. Ct. 1340 (1994), the Supreme Court stated that if a malicious prosecution claim violated a constitutional right, it was most likely a violation of the Fourth Amendment right to freedom from seizure, and not the right to substantive due process of the Fourteenth Amendment. See id. at 273-34. Following Albright, courts of appeals and courts within this district have adjudicated section 1983 malicious prosecution claims only under the Fourth Amendment, rather than the Fourteenth Amendment. See Uboh v. Reno, 141 F.3d 1000 (11th Cir. 1998); Murphy v. Lynn, 118 F.3d 938 (2d Cir. 1997), cert. denied, 118 S. Ct. 1051 (1998), Mateiuc v. Hutchinson, No. 97-1849, 1998 WL 240331, at *2 (E.D. Pa. May 14, 1998) (relying upon Albright and entering summary judgment in favor of defendants as to plaintiff's Fourteenth Amendment malicious prosecution claim); Garcia v. Micewski, No. 97-5379, 1998 WL 547246, at *6 (E.D. Pa. Aug. 24, 1998) (same); Gallo v. City of Philadelphia, 975 F. Supp. 723, 726 (E.D. Pa. 1997), rev'd on other grounds, 161 F.3d 217 (3d Cir. 1998).

Recently, however, the Third Circuit in Torres v. McLaughlin, 163 F.3d 169 (3d Cir. 1998), found the holding of Albright to be more expansive than previously held. The Third Circuit concluded that "Albright stands for the broader proposition

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charges being filed against plaintiff. Therefore, summary judgment shall be granted as to Officer Koehler on this issue.

that a section 1983 claim may be based on a constitutional provision other than the Fourth Amendment. However, [the Third Circuit] note[s] that Albright commands that claims governed by explicit constitutional text may not be grounded in substantive due process." Id. at 172.

In this case, plaintiff claims that Officer Coopersmith deprived plaintiff of her liberty in violation of the Fourteenth Amendment by maliciously filing charges against plaintiff without probable cause. Pl.'s Compl. at ¶ 87. Plaintiff's claim for malicious prosecution arising out of the alleged liberty deprivation pursuant to the Fourteenth Amendment sounds insubstantive due process, i.e., the right to be free from prosecution without probable cause. Under Albright and Torres, therefore, plaintiff's Fourteenth Amendment malicious prosecution cannot survive because claims for malicious prosecution for which there is explicit textual constitutional support, i.e., the Fourth Amendment prohibition against unreasonable "seizure,"[12] may not be based on generalized substantive due process grounds. See Torres, 163 F.3d at 173 ("[I]f a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process. Substantive due process analysis is therefore inappropriate in this case only if respondents' claim is "covered by" the Fourth Amendment.'") (quoting County of Sacramento v. Lewis, 523 U.S. 833, 118 S. Ct. 1708, 1715 (1998)).

Additionally, plaintiff claims a Fourth Amendment violation of malicious prosecution. In order to prevail on this claim, plaintiff must prove the elements of malicious prosecution pursuant to the common law tort of the forum state, which in this case is Pennsylvania. See Hilfirty v. Shipman, 91 F.3d 573, 579 (3d Cir. 1996). In Pennsylvania, a party bringing a malicious prosecution claim must demonstrate that: (1) defendants initiated a criminal proceeding; (2) the criminal proceeding ended in plaintiff's favor; (3) the proceeding was initiated without probable cause; and (4) defendants acted maliciously or for a purpose other than bringing

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[12] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV.

plaintiff to justice. See id. Additionally, because this malicious prosecution is based upon the Fourth Amendment, the Third Circuit has adopted an additional requirement that plaintiff must show "some deprivation of liberty consistent with the concept of 'seizure.'" Gallo v. City of Philadelphia, 161 F.3d 217, 222 (3d Cir. 1998), rev'd on other grounds, 161 F.3d 217 (3d Cir. 1998), (quoting Singer v. Fulton County Sheriff, 63 F.3d 110, 116 (2d Cir. 1995), cert. denied, 517 U.S. 1189, 116 S. Ct. 1676 (1996)). A person can be liable for malicious prosecution if he "'fail[s] to disclose exculpatory evidence to prosecutors, make[s] false or misleading reports to the prosecutor, omit[s] material information from the reports, or otherwise interfere[s] with the prosecutor's ability to exercise independent judgment' in deciding whether to prosecute." Garcia v. Micewski, No. 97-5379, 1998 WL 547246, at *9 (E.D. Pa. Aug. 24, 1998) (quoting Torres v. McLaughlin, 966 F. Supp. 1353, 1364 (E.D. Pa. 1997), rev'd on other grounds, 163 F.3d 169 (3d Cir. 1998)).

In this case, the inquiry turns on whether plaintiff has met the burden of showing that Officer Coopersmith had no probable cause to initiate the simple assault and harassment proceedings against plaintiff based upon the information Officer Coopersmith obtained from Winters in the course of Winters' request for an emergency PFA Order. Defendants argue that there is no genuine issue of material fact that Officer Coopersmith had probable cause to file the criminal complaint against plaintiff.

"Probable cause is proof of facts and circumstances that would convince a reasonable, honest individual that the suspected person is guilty of a criminal offense. 'Probable cause does not depend on the state of the case in point of fact but upon the honest and reasonable belief of the party prosecuting.'" Lippay v. Christos, 996 F.2d 1490, 1502 (3d Cir. 1993) (quoting Miller v. Pennsylvania Railroad Co., 89 A.2d 809, 811 (1952)) (citations omitted). Probable cause means more than mere suspicion, but does not require the police to have evidence beyond a reasonable doubt. See United States v. Glasser, 750 F.2d 1197, 1205 (3d Cir. 1984). Probable cause is "defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing the suspect had committed or was committing an offense.'" Gerstein v. Pugh, 420 U.S. 103, 111, 95 S. Ct. 854 (???), (quoting Beck v. Ohio, 379 U.S. 89, 91, 85 S. Ct. 223 (1964)). The question of probable cause is generally one for the jury,

but where the uncontroverted facts could not lead a reasonable person to find that probable cause was lacking, the Court may decide the issue. See Deary v. Three Un-Named Police Officers, 746 F.2d 185, 190 (3d Cir. 1984); Huffaker v. Bucks County Dist. Attorney's Office, 758 F. Supp. 287, 291 (E.D. Pa. 1991).

Officer Coopersmith charged plaintiff with simple assault and harassment. Defs.' Mot. for Summ. J., App. § 2. A person is guilty of simple assault if he "attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another." 18 Pa. Cons. Stat. Ann. § 2701 (a) (1). A person commits the crime of harassment when "with intent to harass, annoy or alarm another person, he strikes, shoves, kicks or otherwise subjects him to physical contact, or attempts or threatens to do the same . . . or he engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose." 18 Pa. Cons. Stat. Ann. § 2709 (a) (1), (3).

It is uncontroverted that on the night of September 14, 1996, plaintiff and her husband, Winters, had an altercation concerning an electric dental flosser. Defs.' Mot. for Summ. J., App. § 9, Pl.'s Dep. at 87-89. After some time, Winters got into a van and left the residence. Id. at 93. At the police station Winters told Officer Coopersmith that plaintiff scratched him with a dental flosser. Pl.'s Resp., App. § 11, Coopersmith Dep. at 8. Winters then showed Officer Coopersmith the scratches on his chest, and police photographs were taken of the injuries. Id. at 8, 12. Officer Coopersmith informed Winters of his right to get an emergency PFA Order, which Winters chose to do. Id. at 9-10. Officer Coopersmith led Winters to the office of a District Justice, where Winters spoke directly to the District Justice. Id. at 10, 13-14. The District Justice issued an emergency PFA Order ordering plaintiff to refrain from abusing Winters and removing plaintiff from the residence. Id. at 14; Defs.' Mot. for Summ. J., App. § 1.[13] Therefore,

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[13] Throughout her pleadings, plaintiff has insinuated that the injuries to Winters were self-inflicted by an object other than the dental flosser, that the photographs may have been doctored, or that the injuries may have been falsely created by body art or tattoos. Although plaintiff has produced an expert report indicating that the injuries to Winters may have been self-inflicted by an object other than the dental flosser, Pl.'s Resp., App. §§ 5, 6, plaintiff has produced no evidence to support her speculations that the photographs were doctored or that the injuries to Winters were false.

the Court finds that, based upon the evidence possessed by Officer Coopersmith at the time she filed the simple assault and harassment charges against plaintiff, there was probable cause to do so.

Plaintiff further contends that Officer Coopersmith filed the criminal charges in retaliation against plaintiff. In her response to defendants' motion for summary judgment, plaintiff refers the Court to Losch v. Borough of Parkesburg, Pennsylvania, 736 F.2d 903 (3d Cir. 1984), where the Third Circuit found in part that the district court should not have granted summary judgment as to plaintiff's malicious prosecution claim "unless the opponent's evidence is 'too incredible to be believed by reasonable minds.'" Id. at 909. In Losch, plaintiff was charged with harassment and threatening a police officer when plaintiff wrote a note to a police officer, advising the officer "to stop picking on my wife and children and accepting information that is not true." Id. at 906. Plaintiff's note also indicated that plaintiff "ha[s] intentions of taking this matter before the County District Attorney's Office and having you [the officer] arrested for a number of offenses." Id. To support plaintiff's contention that defendants maliciously filed criminal charges against plaintiff for the purpose of penalizing plaintiff for exercising his First Amendment rights by writing the note, plaintiff offered, among other evidence, at least three sworn witness statements: a statement by plaintiff's wife and daughter each recalling being told by an officer that he was "going to get [plaintiff] back . . . and have him arrested"; and a statement by a former Assistant District Attorney attesting that he believed the charges were filed maliciously. Id. at 908.

In this case, as evidence of malice by Officer Coopersmith, plaintiff relies upon the Danville incident. However, this incident did not directly involve Officer Coopersmith, nor has plaintiff adduced evidence that Officer Coopersmith even had knowledge of the Danville Incident. In any event, even assuming that Officer Coopersmith had acted maliciously, plaintiff has not fulfilled her burden to show that there was no probable cause to file the charges against plaintiff. Therefore, summary judgment shall be granted in favor of defendants as to plaintiff's Fourth Amendment malicious prosecution claim.

E. Plaintiff Has Not Produced Sufficient Evidence to Establish Supervisory Liability for Chief Fretz.

Plaintiff's complaint does not allege any specific allegations of supervisory liability against Chief Fretz. However, it appears that in plaintiff's subsequent filings, albeit without leave to amend the complaint, she attempted to impose supervisory liability upon Chief Fretz for his failure to train and supervise police officers, and for approving the criminal charges filed by Officer Coopersmith against plaintiff. Defendants argue that plaintiff has failed to adduce sufficient evidence to support supervisory liability against Chief Fretz.

The fact that a defendant is in a supervisory position is insufficient to establish liability as there is no respondeat superior liability under section 1983. See Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976). In order to impose supervisory liability against Chief Fretz, the Court must determined that the harm to plaintiff was caused by a constitutional violation, and if so, that Chief Fretz was responsible for that violation. See Bielevicz v. Dubinon, 915 F.2d 845, 850-51 (3d Cir. 1990). The Court having found that there was no constitutional violation committed by the underlying officers, supervisory liability cannot be imposed upon for Chief Fretz for an alleged failure to train and supervise, or for approving the criminal charges against plaintiff. See Kis v. County of Schuylkill, 866 F. Supp. 1462, 1473-74 (E.D. Pa. 1994) (granting summary judgment to defendants Chief of Police and Mayor in part because their liability was grounded in the liability of an underlying police detective, who the court found had not violated plaintiff's constitutional rights); Valenti v. Sheeler, 765 F. Supp. 227, 232 (E.D. Pa. 1991) (finding that defendant Chief of Police was not liable for failure to train or adequately supervise where the court concluded that the conduct of the underlying officers was reasonable and based on probable cause).

Assuming arguendo that Officers Coopersmith and Koehler had committed a constitutional violation, plaintiff has failed to put forth sufficient evidence to show deliberate indifference by Chief Fretz. The Third Circuit has set forth the standards to be applied to an action for supervisory liability under section 1983:

> [T]he standard of individual liability for supervisory public officials will be found to be no less stringent than the

> standard of liability for the public entities that they serve. In either case, a "person" is not the "moving force [behind] the constitutional violation" of a subordinate, unless that "person"--whether a natural one or a municipality--has exhibited deliberate indifference to the plight of the person deprived.

Sample v. Diecka, 885 F.2d 1099, 1117-18 (3d Cir. 1989) (quoting City of Canton, Ohio v. Harris, 489 U.S. 378, 388-89 (1989)). Plaintiff, therefore, must identify a specific supervisory failure by Chief Fretz that evidences deliberate indifference to plaintiff's plight, and that there is a close causal relationship between Chief Fretz's alleged failure or deficiency and the ultimate injury to plaintiff. See Sample, 885 F.2d at 1118.

In order to prevail against Chief Fretz, plaintiff would be required to show that the injury to plaintiff could have been avoided had Officers Coopersmith and Koehler been trained under a program that was not deficient in an identified respect. See City of Canton, 489 U.S. at 1206. Considering the facts in the light most favorable to the plaintiff, plaintiff asserts that Chief Fretz failed to train and supervise police officers in handling domestic violence situations, executing PFA Orders, and filing criminal charges. As a result, plaintiff avers that her Fourth Amendment rights were violated.

Plaintiff, however, fails to identify a specific practice that Chief Fretz failed to employ that points to Chief Fretz's deliberate indifference to plaintiff's injury, and that plaintiff's injury is affirmatively linked to Chief Fretz's failure to implement a certain practice. Plaintiff offers little evidence as to direct involvement in or acquiescence by Chief Fretz in a deliberate failure to implement a specific training or supervisory practice that is directly linked to plaintiff's alleged deprivation of rights in this instance. Plaintiff's only evidence of direct involvement by Chief Fretz in the incident before this Court is that Chief Fretz approved Officer Coopersmith's filing criminal charges against plaintiff. Pl.'s Resp., App. § 10, Fretz Dep. at 11. Mere approval of a prospective criminal complaint, absent any indicia that Chief Fretz had prior knowledge of the incident or that the complaint appeared suspicious on its face, does not convert Chief Fretz into the "moving force" behind any alleged constitutional violation committed by Officer Coopersmith.

Moreover, while plaintiff makes reference to a prior incident that occurred between plaintiff and the Palmer Township Police Department, specifically, the Danville incident, plaintiff does not assert that any prior injuries to plaintiff were similar to the injuries asserted here, that there was a specific failure to train and supervise by Chief Fretz, or that Chief Fretz was the "moving force behind" or acquiesced to such deliberate indifference.

Even assuming that Officers Coopersmith and Koehler violated plaintiff's constitutional rights, plaintiff has failed to adduce sufficient evidence to substantiate a claim of deliberate indifference by Chief Fretz, or that any injury to plaintiff was affirmatively linked to Chief Fretz's deliberate indifference. Therefore, the Court finds that defendants are entitled to summary judgment regarding plaintiff's claim of supervisory liability against Chief Fretz.

F. Plaintiff Has Not Produced Sufficient Evidence To Establish An Unlawful Policy Or Custom By Palmer Township And The Palmer Township Police Department.

In her complaint, plaintiff avers that Palmer Township and the Palmer Township Police Department have engaged in "policies and customs of encouraging, tolerating, permitting and ratifying a pattern of illegal actions which was known to it or should have been known to it." Pl.'s Compl. at ¶ 55. Plaintiff also contends that Palmer Township and the Palmer Township Police Department have "grossly failed to train their police officers in the fundamental law of investigations and arrest and on executing PFA's and evictions which directly lead [sic] to plaintiff's damages." Pl.'s Compl. at ¶ 56. In response, defendants argue that there is no evidence on the record to support a finding of policies or customs by Palmer Township or the Palmer Township Police Department to violate citizens' constitutional rights, and that plaintiff has presented no evidence to show defendants' deliberate indifference via their alleged failure to train. As with Chief Fretz, the Court having concluded that no underlying constitutional violation was committed by Officers Coopersmith and Koehler, municipal liability cannot be imposed upon Palmer Township and the Palmer Township Police Department. Even assuming that a violation was

committed by Officers Coopersmith and Koehler, the Court finds that there is no municipal liability in this case.

A municipality can be held liable under section 1983 for implementing an official policy, practice or custom "'when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.'" Losch v. Borough of Parkesburg, Pennsylvania, 736 F.2d 903, 910 (3d Cir. 1984) (quoting Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037 (1978)). As with supervisory liability, "[a] plaintiff must identify the challenged policy, attribute it to the city itself, and show a causal link between execution of the policy and the injury suffered." Losch, 736 F.2d at 910.

Plaintiff has failed to produce any evidence supporting her contentions that Palmer Township's and the Palmer Township Police Department's customs or policies were deliberately indifferent with regard to citizens' Fourth Amendment rights that allegedly resulted in injury to plaintiff. Plaintiff does not specifically identify the deficient customs or policies utilized by Palmer Township and the Palmer Township Police Department that caused plaintiff's injury. Nor does plaintiff identify a particular aspect of a failure to train that evidences either Palmer Township's or the Palmer Township Police Department's deliberate indifference, and the causal link between an alleged failure to train and the injury to plaintiff. Plaintiff again refers to incidents such as the Danville incident, but there is no similar injury to plaintiff involving a violation of plaintiff's Fourth Amendment rights, malicious prosecution, or the improper execution of a PFA Order. The record also does not reflect evidence of similar civil rights violations of other persons allegedly committed by officers of the Palmer Township Police Department. In essence, plaintiff has failed to "show both contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents and circumstances under which the supervisor's actions or inaction could be found to have communicated a message of approval to the offending subordinate." Montgomery v. De Simone, 159 F.3d 120, 127 (3d Cir. 1998). To impose municipal liability upon Palmer Township and the Palmer Township Police Department, it is not

enough for plaintiff to show that a particular officer is unsatisfactorily trained because the officer's shortcomings may have resulted from factors other than a faulty training program. See City of Canton, Ohio v. Harris, 489 U.S. 378, 390-91, 109 S. Ct. 1197 (1989). It is also not enough for plaintiff to prove that her injury could have been avoided if the officers had had better or more training that would have enabled the officers to avoid the particular injury-causing conduct. "Such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the usual and recurring situations with which they must deal." Id.

Since plaintiff has failed to show the inadequacy of the officers' training program by identifying a specific deficiency, nor has plaintiff specified an affirmative link or close relation between the identified deficiency and the alleged injury to plaintiff, even assuming Officers Coopersmith and Koehler violated plaintiff's constitutional rights, there can be no municipal liability and summary judgment is granted in favor of defendants.

G. Plaintiff's State Law Claim.

Plaintiff alleges that, pursuant to Pennsylvania law, defendants defamed her in the local press by unlawfully releasing to the local newspaper information concerning the PFA Order obtained by Winters against plaintiff and the criminal charges filed by Officer Coopersmith against plaintiff. Defendants argue that the information contained in the criminal complaint are absolutely privileged, and that Palmer Township and the Palmer Township Police Department are immune from claims of intentional torts, such as defamation, allegedly committed by governmental employees.[14]

Having granted summary judgment in favor of all of the defendants as to all of plaintiff's section 1983 claims, and there being no independent basis for federal jurisdiction over the state law claim, the Court need not address the merits of plaintiff's defamation claim. Therefore, the Court will exercise its discretion,

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[14] Plaintiff has conceded that only Palmer Township as a local government is exempt from liability for defamation, therefore, summary judgment shall be entered in favor of Palmer Township as to plaintiff's defamation claim. Pl.'s Resp., § J, at 22.

pursuant to 28 U.S.C. § 1367 (c) (3), and will decline supplemental jurisdiction over plaintiff's state law claim.[15] See Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995).

V. Conclusion

For the foregoing reasons, the Court finds that summary judgment is granted in favor of defendants as to plaintiff's claims under 42 U.S.C. § 1983, and plaintiff's state law claim is dismissed without prejudice.

An appropriate Order follows.

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[15] 28 U.S.C. § 1367(c)(3) reads as follows:
The district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 99-1525

LORRAINA J. TELEPO,

Appellant,

v.

PALMER TOWNSHIP; PALMER POLICE DEPARTMENT; BRUCE FRETZ, Chief of Police; OFFICER SUSAN COOPERSMITH; OFFICER GLENN KOEHLER

On Appeal From the United States District Court For the Eastern District of Pennsylvania
(D.C. Civ. No. 97-cv-06053)
District Judge: Honorable Eduardo C. Robreno

Submitted Under Third Circuit LAR 34.1(a)
July 3, 2000

Before: SCIRICA, ROTH, and COWEN, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania. On consideration whereof, it is now here ORDERED AND

ADJUDGED by this Court that the judgment of the District Court entered on March 1, 1999 be, and the same is, hereby affirmed.

Costs taxed against appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:
Patricia Coleman.
"s/Acting Clerk"

Dated: October 13, 2000

Certified as a true copy and issued in lieu of a formal mandate on November 30, 2000
Teste: "s/Marcia M. Waldron"
Clerk, U.S. Court of Appeals For the Third Circuit.

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 99-1525

LORRAINA J. TELEPO

Apellant,

v.

PALMER TOWNSHIP; PALMER POLICE DEPARTMENT; BRUCE FRETZ, Chief of Police; OFFICER SUSAN COOPERSMITH; OFFICER GLENN KOEHLER

On Appeal From the United States District Court For the Eastern District of Pennsylvania
(D.C. Civ. No. 97-cv-06053
District Judge: Honorable Eduardo C. Robreno

Submitted Under Third Circuit LAR 34.1(a)
July 3, 2000

Before: SCIRICA, ROTH, and COWEN, Circuit Judges

(Filed: October 13, 2000)

OPINION

PER CURIAM:

Appellant Lorraina J. Telepo appeals the grant of summary judgment to Palmer Township, Chief Bruce Fretz, the police department itself, and Officers Susan Coopersmith and Glenn Koehler. On September 14, 1996, a Saturday, Telepo's husband, Harold Winters went to the Palmer Township police department at about 11:30 p.m. and complained that Telepo, as a result of an argument, had slashed him on the bare chest and stomach with the sharp point of a Braun Oral B battery-operated dental flosser. Winters showed Officer Susan Coopersmith two or three not insignificant scratches on his upper body and Coopersmith obtained photographs of the scratches. Winters also complained that Telepo had punched him about the body and had smashed the windshield of his van with a hammer after he left their apartment.

Officer Coopersmith advised Winters that he could obtain an emergency Protection From Abuse order against Telepo.[1] Winters wanted such an order. He followed Officer Coopersmith to the office of District Justice Harold R. Weaver of Northampton County and repeated his allegations to the District Justice. The District Justice found good cause to protect Winters and signed a Temporary Protection From Abuse ("PFA") Order directing Telepo to refrain from abusing Winters. The order also directed Telepo to vacate the apartment at 16 Fayette Court, in Easton, Pennsylvania, because Winters told the District Justice that he and Telepo lived there together.

At about 1:30 a.m. Officer Coopersmith and Officer Glenn Koehler went to the apartment at 16 Fayette Court to serve the PFA order on Telepo. Telepo was advised that she would have to leave until the following Monday morning when the order would expire and that Winters intended to press charges. Telepo protested that she was the sole leaseholder of the apartment and argued that Winters did not reside there, but the defendant officers proceeded to evict her anyway. Apparently Winters' clothes were in a bedroom closet. Officer Koehler asked Telepo to turn over the dental flosser and she voluntarily complied. Telepo asked to be allowed to change her clothing, and when she tried to shut the door to the bathroom, Officer Coopersmith allegedly pushed her arm roughly to prevent her from doing so. Telepo spent the night in a

[1]Pennsylvania's Protection From Abuse Act, 23 Pa. Cons. Stat. Ann. § 6101, et seq., protects victims of domestic abuse through numerous provisions that enable courts to respond quickly and flexibly to both early signs and subsequent acts of abuse with the issuance of protection orders. See Commw. v. Snell, 737 A.2d 1232, 1235 (Pa. Super. Ct. 1999).

motel.

On the following Monday, September 16, 1996, Officer Coopersmith filed a criminal complaint charging Telepo with simple assault, 18 Pa. Const. Stat. Ann. § 2701(a)(1), and harassment, 18 Pa. Cons. Stat. Ann. § 2709(a)(1). The complaint was mailed to Telepo; she was not arrested. The filing of charges was reported in the local newspaper on September 17, 1996. A preliminary hearing was held in the Court of Common Pleas of Northampton County on October 15, 1996. Under oath Winters testified that he and Telepo had had an argument about the dental flosser, and that Telepo took the flosser and cut him in two or three places on his bare upper body with the sharp plastic tip of the flosser. Winters identified the photographs of his injuries that had been taken at the police station on the night of the incident. Winters also testified that Telepo had smashed his windshield with a hammer. (N.T. 10/15/96, at 7-12.) At the conclusion of the hearing, a prima facie case having been established, the charges were bound over for trial.

Not long thereafter Winters recanted and an order of *nolle prosequi* was entered as to the charges. Telepo then commenced the instant civil rights action under 42 U.S.C. § 1983 against the defendants, claiming that the eviction was an unconstitutional seizure of property, that the prosecution was malicious, and that Officer Coopersmith used excessive force during the eviction, among other minor claims. Chief Fretz was alleged to have failed to properly train Officers Coopersmith and Koehler. The Township and police department were alleged to have a policy of condoning the use of excessive force in carrying out evictions. The complaint also contained a count for common law defamation. After a period of discovery, the defendants moved for summary judgment, and, in an order entered on March 1, 1999, the District Court granted the motion.

In a thorough opinion, the District Court explained, among other things, that the officers' conduct was objectively reasonable in light of the information known to them at the time of the eviction and the filing of charges. In short, Harry Winters' complaint about his wife's conduct gave the police probable cause to obtain the PFA Order, pursuant to which the eviction was brought about, and gave the police probable cause to bring assault and harassment charges. Officer Coopersmith's action in pushing Telepo's arm as she tried to shut the bathroom door was insufficient as a matter of law to make out a claim of excessive force. No action would lie against Chief Fretz because supervisors are not liable for money damages under

42 U.S.C. § 1983. In addition, Telepo's allegation of a Township policy of tolerating the use of excessive force during evictions was wholly unsupported. The District Court declined to exercise jurisdiction over the defamation count and dismissed it without prejudice. Telepo appeals.

We have jurisdiction under 28 U.S.C. § 1291.[2] We will affirm the order of the District Court awarding summary judgment to the defendants on all claims and dismissing the defamation count without prejudice. Telepo's civil action lacks merit for the reasons given by the District Court in its thorough opinion. In sum, Officer Coopersmith's insignificant action in pushing Telepo's arm away from the bathroom door is legally insufficient to make out a claim for money damages for use of excessive force. See Graham v. Connor, 490 U.S. 386, 396 (1989). The action against Chief Fretz is based on a theory of respondeat superior and will not lie. Liability

[2]Telepo's attorney did not file a notice of appeal on her behalf within 30 days after entry of the final order as required by Federal Rule of Appellate Procedure 4(a)(1), apparently because he never received a copy of the final order. He had no knowledge that an opinion had been filed until April 26, 1999, at which time he telephoned the district judge's chambers and chambers' staff faxed him a copy of the opinion. On April 26, 1999, Telepo filed an item pro se in the district court titled "Response Letter Regarding Notice of Summary Judgment," in which she explained that her attorney had failed to tell her that her case had been dismissed. She asserted that she learned of the dismissal on her own when she telephoned the district court clerk's office on April 23, 1999. Telepo requested an extension of time to appeal. On May 5, 1999, Telepo filed an item pro se titled "Motion of Reconsideration and/or Rule To Show Cause, etc.," in which she also requested an extension of time to appeal. In an order entered on June 18, 1999, the District Court, construing Telepo's May 5, 1999 motion as having been brought under Federal Rule of Appellate Procedure 4(a)(6), granted Telepo 14 additional days to file a notice of appeal. Telepo filed a notice of appeal on June 18, 1999. Rule 4(a)(6)(A) permits a district court to reopen the appeal period for 14 days but only if the motion is filed within 7 days after the moving party receives notice of the entry. The item filed on May 5, 1999, which the District Court construed as the Rule 4(a)(6) motion, was not filed within 7 days after April 23rd when Telepo learned of the dismissal or within 7 days after April 26th when her attorney learned of the dismissal. See Fed. R. App. Pro. 26(a). We find that we have jurisdiction over the appeal, however, because the item filed by Telepo on April 26th qualifies as a Rule 4(a)(6) motion, and it *was* filed within the 7-day period. Clearly the District Court intended to reopen the appeal period for Telepo, and the court's reliance on the May 5th request for an extension is of no significance under the circumstances.

under 42 U.S.C. § 1983 cannot be imposed on a supervisor unless the supervisor is personally involved in the alleged actions. See Rizzo v. Goode, 423 U.S. 362, 375-76 (1976). Chief Fretz was not personally involved in evicting and charging Telepo. The allegation that the Township and its police department initiated a plan, policy or custom that violated Telepo's constitutional rights, see Monell v. Dep't of Social Services of City of New York, 436 U.S. 658 (1978), was unsupported by any evidence whatever.

In an action for malicious prosecution under the common law of Pennsylvania, a plaintiff must show that charges were brought without reasonable or probable cause, that the conduct was actuated by malice, and that the prosecution terminated favorably to the plaintiff. See Cosmas v. Bloomingdales Bros., Inc., 660 A.2d 83, 85 (Pa. Super. Ct. 1995). A plaintiff asserting a constitutional malicious prosecution claim must show some deprivation of liberty consistent with the concept of seizure in addition to showing the elements of the common law tort. See Gallo v. City of Philadelphia, 161 F.3d 217 (3d Cir. 1998).

Probable cause in the context of the tort of malicious prosecution does not require proof beyond a reasonable doubt, but rather, is defined as "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that a party is guilty of the offense." Cosmas, 660 A.2d at 86. A showing of probable cause to institute proceedings against a plaintiff establishes an absolute defense against an action for malicious prosecution and renders immaterial the issue of whether the actor's motive is malicious or otherwise. See Bruch v. Clark, 506 A.2d 854, 856 (Pa. Super. Ct. 1986).

We think it beyond question that there was probable cause to charge Telepo with simple assault, 18 Pa. Cons. Stat. Ann. § 2701(a)(1) (West Supp. 1999), and harassment, 18 Pa. Cons. Stat. Ann. § 2709(a)(1) (West Supp. 1999).[3] The issue is not whether Winters later changed his testimony. Instead liability turns on whether the facts and circumstances within the charging officer's knowledge, *at the time charges are brought*, are sufficient to warrant a reasonable person to believe that an offense has been

[3]A person is guilty of simple assault if she "attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another." 18 Pa. Cons. Stat. Ann. § 2701(a)(1). A person commits the crime of harassment when "with intent to harass, annoy or alarm another person," she "strikes, shoves, kicks or otherwise subjects him to physical contact, or attempts or threatens to do the same." 18 Pa. Cons. Stat. Ann. § 2709(a)(1).

committed by the person to be charged. Officer Coopersmith unquestionably had an objectively reasonable belief that she had probable cause to charge Telepo with simple assault and harassment on the strength of Winters' then credible assertions and visible injuries.

With respect to Telepo's claim that her property was unconstitutionally seized when she was evicted, we find that there was no Fourth Amendment violation. Seizures of property are subject to Fourth Amendment scrutiny. See Soldal v. Cook County, Illinois, 506 U.S. 56 (1992). A seizure of property occurs within the meaning of the Fourth Amendment whenever there is some meaningful interference with an individual's possessory interests in that property. Id. at 61. Whether the Fourth Amendment was in fact violated is, however, a different question that requires determining if the seizure was reasonable. Id. at 61-62. Telepo argues that the eviction was unreasonable because she is the sole lesse of the apartment at 16 Fayette Court, because she and Winters were separated at the time of the incident and he did not live with her, and because she notified Officers Coopersmith and Koehler of these facts when they came to evict her. Even if we accept these things as true, Winters told the officers and the district justice that he and Telepo were married and that he lived at 16 Fayette Court. Thus, Coopersmith and Koehler were confronted with a genuine dispute about whether Winters was actually living with Telepo on the night of September 14, 1996.

The Fourth Amendment does not require officers like Coopersmith and Koehler to resolve complex factual disputes. It only requires the defendant officers to act reasonably, and this they did. If the facts and circumstances within Coopersmith's and Koehler's knowledge at the time of the eviction were sufficient to warrant a reasonable person to believe that Winters lived at 16 Fayette Court, as he said he did, they cannot be held liable for money damages under the federal civil rights laws. The true facts were unclear in view of Telepo's assertions, but the circumstances were sufficient to warrant a reasonable person to believe that Winters lived at 16 Fayette Court. Telepo and Winters were together in the apartment late on a Saturday night. The couple admittedly was still married. Winters' clothes were in a bedroom closet. In view of Winters' unequivocal assertions that he resided in that apartment, these circumstances establish that the officers' conclusion that Winters was telling the truth, and actions in evicting Telepo pursuant to the PFA Order, were reasonable.

We will affirm the order of the District Court granting summary judgment to the defendants. To the extent that the District Court identified other claims not specifically addressed here, and granted summary judgment to the defendants on those claims, the order as to those claims will be affirmed as well. The motion to lodge exhibits is denied.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 99-1525

LORRAINA J. TELEPO, Appellant

v.

PALMER TOWNSHIP, et al

(Eastern District of PA) DC No. 97-CV-6053

Present: SCIRCA, ROTH and COWEN, Circuit Judges

1) Motion by Appellant Lorraina J. Telepo "To Accept Affidavit."

Carolyn Hicks, Case Manager
Direct Dial 267-299-4926

ORDER

The foregoing motion to accept affidavit is denied.

By the Court,
"s/Honorable I. Roth"
Circuit Judge

Dated: Oct 27, 2000

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 99-1525

LORRAINA J. TELEPO, Appellant

v.

PALMER TOWNSHIP, et al

(Eastern District of PA) DC No. 97-CV-6053

Present: SCIRCA, ROTH and COWEN, Circuit Judges

1) Motion by Appellant Lorraina J. Telepo to Lodge Exhibits.

2) The above was referred to the Merits Panel by Clerk's Order filed. 1/18/00.

Carolyn Hicks, Case Manager
Direct Dial 267-299-4926

ORDER

The foregoing motion to lodge exhibits is denied.

By the Court,
"s/Honorable I. Roth"
Circuit Judge

Dated: Oct 27, 2000

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 99-1525

LORRAINA J. TELEPO, Appellant

vs.

PALMER TOWNSHIP, et al

(E.D. Pa Civ. No. 97-cv-6053)

Present: SCIRCA, ROTH and COWEN, Circuit Judges

1. Appellant's motion for appointment of counsel, which includes a request for mediation

2. Appellant's application for in forma pauperis status in support of her motion for appointment of counsel

For the Court's information, a copy of the letter from the Staff Attorney's Office dated April 17, 2000, referring the document to the merits panel is attached.

"s/Marisa I.G. Watson"
Supervising Staff Attorney

Listed for Deposition: July 3, 2000

MJGW/dmg

ORDER

The foregoing motion for appointment of counsel is denied.

By the Court,
"s/Honorable I. Roth"
Circuit Judge

Dated: Oct 27, 2000

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 99-1525

LORRAINA J. TELEPO, Appellant

v.

PALMER TOWNSHIP, et al

(Eastern District of PA) DC No. 97-CV-6053

Present: SCIRCA, ROTH and COWEN, Circuit Judges

1) Motion by Appellant Lorraina J. Telepo to order the district court to transmit sections 5, 43, and 45 to the Court of Appeals.

Carolyn Hicks, Case Manager
Direct Dial 267-299-4926

ORDER

The foregoing motion to order the District Court to transfer sections 5, 43, and 45 is denied.

By the Court,
"s/Honorable I. Roth"
Circuit Judge

Dated: Oct 27, 2000

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 99-1525

LORRAINA J. TELEPO,

Appellant,

v.

PALMER TOWNSHIP; PALMER POLICE DEPARTMENT; BRUCE FRETZ, Chief of Police; OFFICER SUSAN COOPERSMITH; OFFICER GLENN KOEHLER

On Appeal From the United States District Court For the Eastern District of Pennsylvania
(D.C. Civ. No. 97-cv-06053)
District Judge: Honorable Eduardo C. Robreno

Before: BECKER, Chief Judge, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO, FUENTES, and COWEN*, Circuit Judges

ORDER

The petition for rehearing en banc filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing,

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* Honorable Robert E. Cowen, Senior Judge for the Third Circuit, vote limited to panel rehearing only.

and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,
Honorable J. Roth.
"s/Circuit Judge"

Dated: Nov. 22, 2000